



FORECLOSURE SALE

30 UNIT APARTMENT COMPLEX

IN NESS CITY, KANSAS 67560



WHEATVIEW APARTMENTS

Is offered for sale at foreclosure.

Bids will be accepted orally
on October 10, 2006
at: 10 am local time

at: Ness County Courthouse
(Main floor)
202 W. Sycamore
Ness City, KS 67560



U. S. Department of Housing and
Urban Development

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ATTACHMENTS

- | | |
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| <input checked="" type="checkbox"/> ATTACHMENT B - Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder | <input checked="" type="checkbox"/> ATTACHMENT E – Environmental Information |
| <input checked="" type="checkbox"/> ATTACHMENT C - Foreclosure Use Agreement | <input checked="" type="checkbox"/> ATTACHMENT F – HAP Contract |
| | <input checked="" type="checkbox"/> ATTACHMENT G – Certification of Substantial Compliance |

PROCEDURES AND FORMS REQUIRED TO COMPLETE BID AND PURCHASE

New Procedure Requirements – Previous Participation Certification

HUD's Active Partners Performance System (APPS) allows for the electronic submission of **Previous Participation Certification Form HUD-2530** on HUD's Secure Systems Internet site. Registration to use HUD's APPS and Secure Systems is a two-step process. All potential bidders registering for the first time in APPS should do so at least two weeks prior to the sale. Be advised that after registration in these systems, it takes approximately two weeks to receive the User/Coordinator ID. It is suggested that potential bidders register in these systems prior to the sale date. Please note that registration is not mandatory in order to bid at the foreclosure sales. However, bidders must comply with registration and 2530 requirements as outlined in ATTACHMENT B, TERMS AND REQUIREMENTS OF FORECLOSURE SALE - ACKNOWLEDGMENT BY BIDDER, Rider 1. For more information see Section 1 – Introduction and General Information, Section 2 – Previous Participation Certification and Section 4 – Submission of Post Bid Documents.

**THESE FORMS ARE AVAILABLE AT http://www.hudclips.org/sub_nonhud/html/forms.htm
OR CLICK ON THE URL BELOW TO OBTAIN THE FORM**

<input checked="" type="checkbox"/>	Personal Financial and Credit Statement (Form HUD-92417) for each proposed principal and/or partner http://www.hudclips.org/sub_nonhud/html/pdfforms/92417.pdf
<input checked="" type="checkbox"/>	Affirmative Fair Housing Marketing Plan (Form HUD-935.2) http://www.hudclips.org/sub_nonhud/html/pdfforms/935-2.pdf
<input checked="" type="checkbox"/>	Management Entity Profile (Form HUD-9832) http://www.hudclips.org/sub_nonhud/html/pdfforms/9832.pdf
<input checked="" type="checkbox"/>	Management Certification for Multifamily Housing Projects (Form HUD-9839 A) http://www.hudclips.org/sub_nonhud/html/pdfforms/9839-a.pdf
<input checked="" type="checkbox"/>	Management Certification for Multifamily Housing Projects (Form HUD-9839 B) http://www.hudclips.org/sub_nonhud/html/pdfforms/9839-b.pdf
<input checked="" type="checkbox"/>	Project Owner's/Borrower's Certification (Form HUD-9839 C) - For elderly housing projects managed by Administrators only http://www.hudclips.org/sub_nonhud/html/pdfforms/9839-c.pdf
<input checked="" type="checkbox"/>	Direct Deposit Signup (Standard form 1199-A) http://www.hudclips.org/sub_nonhud/html/pdfforms/sf1199a.pdf

SECTION 1 - INTRODUCTION AND GENERAL INFORMATION

1. **DEFINITION OF INVITATION FOR BID** - This document, including attachments, exhibits, and any amendment thereto, constitute the Invitation for Bid (Invitation) for Wheatview Apartments, FHA Number; 102-35096. PROPERTY AT A GLANCE, Attachment A to this Invitation, contains a summary of facts, figures, and most terms of the sale. This Invitation also includes **information concerning Previous Participation Certification (Form HUD-2530) requirements** and a list of the forms necessary to complete a responsive bid.
 2. **BID RESPONSIVENESS** - A bid must be responsive to the terms of the sale. To be considered for award, a bid must comply in all material respects with this Invitation. Each bid on its face shall be firm, unconditional, responsive, fixed in one amount certain, and not in the alternative. Special conditions, alterations, or deletions will render a bid non-responsive. The terms of the foreclosure sale are those set out in the Invitation for Bid, especially the Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder (Acknowledgment) and Foreclosure Sale Use Agreement. Lack of earnest money deposit, as required by this Invitation, will be cause for bid rejection.
 3. **SALE TO HIGHEST QUALIFIED BIDDER** - Sale of this project will be made to the highest responsive, qualified Bidder.
 4. **NO REDEMPTION PERIOD** - This sale is not subject to redemption by the previous owner.
 5. **BID ACCEPTANCE OR REJECTION** - HUD reserves the right to reject any and all bids, to waive any informality in any bid received, and to reject the bid of any Bidder HUD determines lacks the experience, ability or financial responsibility needed to own the project and to provide management acceptable to HUD.
 6. **CANCELLATION OF SALE** - HUD reserves the right to cancel this Invitation for Bid and/or reject any and all bids.
 7. **BIDDER'S DUE DILIGENCE** - Bidders are encouraged to perform their own due diligence to gain a full understanding of the project and the conditions of sale before submitting a bid.
 8. **POST-CLOSING REQUIRED REPAIRS** - Repair requirements that must be completed after closing, if applicable to this sale, are included in the Form HUD-9552, Post-Closing Repair Requirements, and Exhibits, Attachment E, to this Invitation. The repair requirements listed in Attachment E survive the sale and will be recorded with the Deed. **NOTE:** the Form HUD-9552 and exhibits reflect **cost estimates** of the required repairs. Additionally, repairs listed on the HAP work write-up included in Exhibit E is work defined as "the repair and/or replacements necessary to bring the property into compliance with 24 CFR Part 5 Physical Condition Standards" and may not be inclusive of the total HUD repair requirement for the project (additional repairs may be required under the Post Closing Repair Requirements) and may not result in the release of any or all letter(s) of credit required under the Post Closing Repair Rider.
- While care has been exercised to assure accuracy, all information provided is solely for the purpose of permitting parties to determine whether or not the property is of such type and general character as might interest them in its purchase, and HUD makes no warranty as to the accuracy of such information. The failure of any Bidder to inspect, or be fully informed as to the condition of all or any portion of the property being offered, or condition of sale, will not constitute grounds for any claim, demand, adjustment, or withdrawal of a bid.
9. **RECORDATION OF CERTAIN DOCUMENTS** - Attachment E, Post Closing Repair Requirements (Form HUD-9552) and attachments, if provided herein, and Attachment C, with riders, if provided herein, will be recorded with the Deed.
 10. **SOURCE FOR ADDITIONAL INFORMATION** - Should you need further information, please call the contact person indicated in the Property at a Glance.

SECTION 2 –PREVIOUS PARTICIPATION CERTIFICATION

PREVIOUS PARTICIPATION FOR PARTICIPANTS IN THE MULTIFAMILY PROGRAMS- New Procedure Requirements - Participants in Multifamily foreclosure sales, either as purchasers or management agents are required to register in HUD's Active Partners Performance System (APPS) which allows for the electronic submission of Previous Participation Certification Form HUD-2530 on HUD's Secure Systems Internet site. **Registration is not mandatory in order to bid at the foreclosure sale. However, it is suggested that all potential bidders registering for the first time in APPS do so at least two weeks prior to the sale. For instructions on registering in the APPS and HUD's Secure System click on the following link:**
<http://www.hud.gov/offices/hsg/mfh/pd/genbkits.cfm>

Be advised, that if a Management Agent will be participating in the management of the property, or if you are changing principals, adding principals, changing the name, or changing tax identification, it is the high Bidder's responsibility to ensure that all participants register and complete the 2530 process within the prescribed timeframes.

Failure of any participant to submit a Previous Participation Certification (HUD Form 2530) or other required documents within the indicated time frame shall be grounds for rejection of the bid.

SECTION 3 - FORECLOSURE SALE PROCEDURES AND SUBMISSION OF BIDS

1. **GENERAL** - In order to submit a responsive bid to this Invitation, a Bidder must submit the items indicated in this Section. All the required forms are listed.
2. **BIDDING AT THE FORECLOSURE SALE** -
 - (a) The foreclosure sale is an oral, open bid sale that takes place at the date, time and place indicated in the attached Property at a Glance.
 - (b) The Bidder must either:
 - (i) State a bid price orally at the sale, **or**

- (ii) Submit a written bid to the person that conducts the sale two (2) business days before the date of sale. Written bids, if received, will be read aloud at the sale before oral bids are accepted. Only the person that submitted the written bid, or an agent thereof may raise a written bid price. Please call the contact person indicated in the Property at a Glance for details regarding submitting a written bid.

3. ITEMS THAT MUST BE SUBMITTED AT THE FORECLOSURE SALE

(a) Earnest Money Deposit:

- (i) The earnest money deposit, for not less than the amount specified in the Property at a Glance, must be submitted prior to presenting an oral or written bid.
- (ii) The deposit must be in the form of a money order, certified, cashier's or other banker's check payable to:
THE SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
- (iii) No other method of payment for the earnest money deposit is acceptable.
- (iv) A financial organization submitting a bid on its own behalf must have the earnest money deposit drawn on a separate financial organization.
- (v) Lack of proper deposit will be cause for rejection of the bid by HUD.
- (iv) Immediately following the sale, earnest money will be returned to those whose bids have been rejected.

- (b) Acknowledgment - Immediately after the foreclosure sale has been completed, the high Bidder must submit **ONE** signed copy of the Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder to the person that conducts the foreclosure sale.

4. CORRECTIONS - Any changes or erasures made to a written bid may be made by the Bidder only and must be initialed.

5. TELEGRAPHIC OR FACSIMILE BIDS - Telegraphic or facsimile bids and/or bid modifications will not be considered for award.

6. VERBAL NOTIFICATION TO THE HIGH AND SECOND HIGH BIDDER - The high and second high Bidder will be notified verbally of their bidding positions by the person that conducts the foreclosure sale immediately after the foreclosure sale is completed.

7. REJECTION OF LOWER BIDS - All bids other than the high bid will be rejected verbally at the foreclosure sale by the person that conducts the foreclosure sale.

SECTION 4 - POST FORECLOSURE SALE PROCEDURES

1. CONTINUATION OF OFFERS - The high bid shall be deemed to be a continuing offer from the time of the foreclosure sale until closing or bid rejection by HUD. The second high bid shall be deemed to be a continuing offer until execution of the Foreclosure Sale Use Agreement or until thirty (30) days after the foreclosure sale, whichever occurs first, unless HUD and the second high Bidder mutually agree to extend the offer. After the above activities have occurred, or the extension agreement has ended, the bid will be deemed to have expired.

2. SUBMISSION OF POST-BID DOCUMENTS

➤ **TWO (2) DAYS AFTER FORECLOSURE SALE (FEDERAL WORKING DAYS) –**

1. Previous Participation Certification:

- a. **Bidders not registered in APPS and Secure Systems:** The high Bidder must register in the **Active Partners Performance System (APPS)** which allows for the electronic submission of Previous Participation Certification (form HUD-2530) **and** the HUD's Multifamily Secure Systems **not later than two (2) Federal Government working days** after being verbally notified at the foreclosure sale of being the high Bidder. Please refer to SECTION 2, PREVIOUS PARTICIPATION above for instructions.
- b. **Bidders previously registered in APPS and Secure Systems:** The high Bidder must enter the APPS system and print a copy of the Participant Detail page. That copy must be faxed to the Realty Specialist at (817) 978-5855.

2. Certification of Substantial Compliance – the **complete and original** (Attachment G) must be received in the Fort Worth HUD office within 2 days of the foreclosure sale date.

➤ **TEN (10) DAYS AFTER FORECLOSURE SALE (FEDERAL WORKING DAYS)** - Not later than ten (10) Federal Government working days after being verbally notified at the foreclosure sale of being the high Bidder, the Bidder must, if checked below, submit additional information to the contact person listed in the Property at a Glance.

- ☒ Affirmative Fair Housing Marketing Plan (Form HUD 935.2)
- ☒ Form HUD- 2530 for Purchasing Entity, if different from bidding entity, See Section 2 for procedure
- ☒ Form HUD- 2530 for the Managing Agent, if applicable, See Section 2
- ☒ Personal Financial and Credit Statement (Form HUD 92417)-for each proposed principal/general partner
- ☒ Management Entity Profile (Form HUD 9832)
- ☒ Management Certification (Form HUD 9839 A)
- ☒ Management Certification (Form HUD 9839 B)
- ☒ Project Owner's/Borrower's Certification (HUD Form 9839 C) –for elderly housing project managed by Administrators only
- ☒ Direct Deposit Signup – Standard form 1199A
- ☒ Certification of Disclosure as attached to the Section 8 Rider included in Attachment B
- ☒ Bidders Property Management Statement

The Bidder must complete and submit written statements of how the bidder will:

- (i) Satisfy the condition of the disposition; Bidder must show experience in operating/managing and

administration of Project-based Section 8 Properties with a clientele as defined in the Project-Based Section 8 Rider;

- (ii) Implement a sound financial and physical management program;
- (iii) Respond to the needs of the tenants and work cooperatively with resident organizations; and
- (iv) Provide adequate organizational staff and resources to the project.

☒ Statement of the services, maintenance and utilities that the Bidder proposes to provide.

- **FIFTEEN (15) DAYS AFTER FORECLOSURE SALE** - The high Bidder (owning entity) must electronically file the 2530 within 15 days of the foreclosure sale and fax a printed copy of the 2530 Submission Package to the HUD Office at (817) 978-5855. Please refer to SECTION 2, PREVIOUS PARTICIPATION above for instructions.

FAILURE TO SUBMIT THE REQUIRED DOCUMENTS WITHIN THE INDICATED TIME FRAME SHALL BE GROUNDS FOR REJECTION OF THE BID. HUD RESERVES THE RIGHT TO REJECT THE BID AND RETAIN THE BIDDER'S EARNEST MONEY DEPOSIT.

3. **QUALIFICATION, ACCEPTANCE, REJECTION OF BID**

- (a) HUD will review the high Bidder to determine if qualified, after review and approval of all post bid documents (see paragraph 5), to purchase the project.
 - (i) If HUD approves the high Bidder as being qualified, the high Bidder will be confirmed as and identified as the Purchaser.
 - (ii) If the high bid is rejected due to HUD's determination that the high Bidder is not qualified to purchase the project, HUD will notify the high Bidder in writing.
- (b) If HUD rejects the high Bidder, and HUD elects to contact the second high bidder, the second high Bidder will be given twenty-four (24) hours to submit the earnest money deposit and will be reviewed to determine if qualified to purchase the project.
 - (i) If HUD approves the second high Bidder as being qualified, second high Bidder will be confirmed as and identified as the Purchaser.
 - (ii) If the second high bid is rejected due to HUD's determination that the second high Bidder is not qualified to purchase the project, HUD will notify the second high Bidder in writing.
- (c) HUD's notification of rejection due to lack of qualifications, if applicable, shall be deemed to be given when mailed to the individual indicated in the Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder.
- (d) The written rejection of the bid will be made as promptly as possible and generally within thirty (30) days after the date of the foreclosure sale.

4. **HANDLING OF THE EARNEST MONEY DEPOSIT**

- (a) The earnest money deposit of the high Bidder will be held until HUD determines the high bid/Bidder to be acceptable. If HUD does not accept the high bid, the high Bidder's earnest money will be refunded, unless Bidder has failed to comply with the provisions outlined in Attachment B, Acknowledgement by Bidder, Rider 1, "Previous Participation Certification and Submission of Documents Prior to Closing".
- (b) Interest will not be paid on earnest money deposits.

- 5. **REVIEW OF PROJECT MANAGEMENT** - HUD will review the forms submitted as required by Rider 1, Attachment B, Terms and Requirements of Foreclosure Sale - Acknowledgement By Bidder, for accuracy and to ensure they reflect Bidders qualifications to operate/manage/administrate property of the nature in this sale. HUD may elect to discuss project management plans after submission of the post-bid documents by the high Bidder. HUD reserves the right to reject the bid of any Bidder and retain the Earnest Money Deposit, if the Bidder does not provide management acceptable to HUD.

- 6. **CLOSING DATE REQUIREMENT** - The closing date will take place within the time period specified, in accordance with the Acknowledgment, Attachment B.

- 7. **EXTENSION OF CLOSING** - The right to extend the sales closing is expressly reserved by HUD as set forth in the Acknowledgment, Attachment B.

SECTION 5 - CLOSING

- 1. **EXECUTION OF USE AGREEMENT** - The Bidder must execute Attachment C, "Foreclosure Sale Use Agreement," at closing. HUD will then execute the Agreement.
- 2. **CLOSING DATE AND PLACE** - The closing date and place shall be as determined by the person that conducts the foreclosure sale and/or HUD. The Bidder will be notified of said date and place by the person conducting the foreclosure sale.
- 3. **CASH DUE AT CLOSING** - Cash due at closing is the remainder of the purchase price less the earnest money deposit received, plus or minus any prorations. Cash due at closing includes all initial deposits to reserve accounts, if applicable.
- 4. **PRORATIONS** - There will be no prorations except for the proration of property taxes prepaid by HUD, if any. High bidder is responsible for paying all outstanding property taxes and utility bills including, but not limited to, water/sewer, gas, electric, ect, as well as any other liens/assessments encumbering the property not extinguished by the foreclosure sale action.
- 5. **CLOSING EXPENSES** - Irrespective of local custom, the Bidder shall pay all closing expenses, including, but not limited to, all documentary stamp taxes, and any costs in connection with a review of title or title insurance as

may be requested by the Bidder. HUD will pay all recording fees.

6. **METHOD OF PAYMENT** - Cash due at closing shall be paid in the form of a money order, certified, cashier's or other bank check made payable to: **THE SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**, in accordance with the Acknowledgment, Attachment B.
7. **LETTER OF CREDIT** - If Post-Closing Repair Requirements described in Attachment E are included in this sale, the Bidder, at closing, shall provide HUD with an unconditional, irrevocable, and nondocumentary Letter of Credit (LoC), or a group of no more than five (5) LoCs, in the amount stated in the Property at a Glance. Such LoCs shall expire no earlier than six (6) months after completion of the stated required repairs. HUD will release the undrawn balance in the LoCs six (6) months after completion of repairs. Such undrawn balance shall be of an amount equal to ten percent (10%) of the original total amount of the LoCs.
8. **HOUSING ASSISTANCE PAYMENTS (SECTION 8)** – For projects being sold with Section 8, as stated in the Property at a Glance and the Foreclosure Sale Use Agreement, the Bidder/Purchaser must execute a Housing Assistance Payment Contract.
9. **CLIENTELE TO BE SERVED UNDER THE HAP-** As defined in Paragraph 4 of the Rider – "Project-Based Section 8 Assistance", applied as checked.
10. **CONVEYANCE** - Conveyance of the project shall be by Special Warranty Deed from the person that conducts the foreclosure sale. The deed will not contain any warranty of title.
11. **RECORDATION OF DEED** - HUD shall record the Deed and all other recordable documents. All recordation costs shall be at the expense of HUD.
12. **DOCUMENTS TO BE FURNISHED OR EXECUTED AT CLOSING**

<input checked="" type="checkbox"/> Foreclosure Sale Use Agreement	<input type="checkbox"/> Letter(s) of Credit	<input checked="" type="checkbox"/> Closing Statement
<input checked="" type="checkbox"/> HAP Contract	<input type="checkbox"/> Other:	<input type="checkbox"/> Other:

SECTION 6 - DISCLAIMERS

1. **DISCLAIMER**
 - (a) Bidders interested in purchasing this project are expected to acquaint themselves with the property, and to arrive at their own conclusions as to; physical condition, number and occupancy of revenue producing units, estimates of operating costs, repair costs (where applicable), and any other factors bearing upon valuation of the property. Any bid submitted shall be deemed to have been made with full knowledge of all the terms, conditions and requirements contained in this Invitation for Bid and in any Addendum hereof.
 - (b) While care has been exercised to assure accuracy, all information provided is solely for the purpose of permitting parties to determine whether or not the property is of such type and general character as might interest them in its purchase, and HUD makes no warranty as to the accuracy of such information. The failure of any Bidder to inspect, or be fully informed as to the condition of all or any portion of the property being offered, or condition of sale, will not constitute ground for any claim or demand or adjustment or withdrawal of a bid.
2. **UNAUTHORIZED ORAL STATEMENT OR MODIFICATIONS** - Any oral statement or representation by any representative of HUD changing or supplementing this Invitation for Bid or Addendum hereof, or any condition hereof, is unauthorized and shall confer no right upon the Bidder (Purchaser).
3. **HUD LIABILITY** - In any case, with respect to any claim against HUD, the extreme measure of HUD's liability shall not, in any event, exceed refund of the purchase price, or such portion thereof as HUD may have received.



Property at a Glance



Wheatview Apartments

FHA #: 102-35096

ADDRESS: 412 N. Topeka Ave.
Ness City, KS 67560
COUNTY: Ness

EARNST MONEY: \$50,000
LETTER OF CREDIT: \$0

SALES PRICE: Unstated Minimum
TERMS: All Cash - 30 days to close
SALE TYPE: Foreclosure

PROPERTY INFORMATION

Total Units	Residential	Commercial	Foundation:	Concrete
30	Revenue 30		Roof:	Built-up
	Non-Revenue		Exterior:	Brick veneer
			Floors/Finish:	Carpet/tile

Elevator	Garden	Walk-up	Townhouse	Scattered Sites	Service Center	Mobile Home Park	Nursing Home	Vacant Land	Other:
X									

Number of Buildings	Stories	Year Built	Rehab Year	Site Acreage	Approximate Net Rentable Area
1	4	1978	N/A	Unknown	17,177

Mechanical Systems

Heating:	Air Conditioning
Fuel	Individual
System	Screen
Hot Water:	
Fuel	Electric
System	Individual

Utilities

Public Water	X
Gas Main	
Electric	X
Sanitary Sewer	X
Storm Sewer	
Septic Tank	

Parking

Street	Asphalt
Curb	Concrete
Sidewalk	Concrete
Parking Lot	Asphalt
Parking Spaces	1 Lot
	20

Apartment Features

X	Air Conditioning
	Dishwasher
	Microwave
X	Garbage Disposal
X	Refrigerator
Elec	Range/Oven
X	Drapes/Blinds

Community Features

	Garage
	Covered Parking
X	Laundry Facility
	Cable/Sat Hookup
	Playground
	Pool
X	Community Space

Owner Expense

Water
Electricity

Tenant Expense

OCCUPANCY

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	67%	67%	63%	63%	63%	63%	63%					
2005	60%	63%	70%	63%	67%	67%	67%	67%	63%	67%	67%	67%

ESTIMATED ANNUAL RENTAL INCOME:

# of Units	Type (# of Bdrs)	Approx Square Feet	Current Gross Rent	Estimated utility allowance (UA)	After Sale Contract Rent (excluding UA)	Total After Sale Contract Rent (excluding UA)	Total Estimated/Possible Annual Income	
30	1 Bd	570	\$530	0	530	\$15,900	Rent	\$190,800
							Commercial	
							Parking	
							TOTAL	\$190,800
							Estimated Annual Expenses	
							Administrative	\$43,800
							Utilities	32,800
							Operating	14,600
							Taxes/Insurance	29,900
							Reserve/Replace	9,000
							O & M Maintenance	300
Estimated/Possible Monthly Total						\$15,900	Total	\$130,400

COMMENTS CONCERNING PROPERTY INFORMATION:

HUD does not own or operate this facility and can not grant access for viewing.

Due diligence should be performed in advance of submitting a bid. While care has been exercised to ensure accuracy, all information provided is solely for the purpose of permitting parties to determine whether or not the property is of such type and general character as to interest them in its purchase. HUD makes no warranty as to the accuracy of such information.

USE RESTRICTIONS

20 Years affordable housing.

PROJECT BASED SECTION 8

Assistance will be available for eligible residents in 30 units at the property. See HAP Contract and Section 8 Rider to the Foreclosure Sale Use Agreement for additional information.

TERMS OF SALE

The purchaser must complete the repairs to comply with Uniform Physical Condition Standards, and State and local code within 6 months after closing.

Closing is to be held 30 days after HUD accepts the bid. If HUD authorizes an extension of the closing, the purchaser must pay a fee which is the greater of 1.5% of the purchase price or HUD's holding costs of \$19.46 per unit per day for each 30 day period.

RIDERS INCLUDE: Affordability, Reserve for Replacement, Required Rehab and Relocation, Lead-based Paint, Asbestos, Mold, Project based Section 8, Nondiscrimination, Residency Requirement

The USE AGREEMENT dated May 26, 1999, will be terminated upon foreclosure.

PROSPECTIVE BIDDERS SHOULD READ AND THOROUGHLY UNDERSTAND ALL INFORMATION PROVIDED HEREIN AND IN THE BID KIT PRIOR TO SUBMITTING A BID.

This is an "All Cash – As Is" sale. HUD is providing no financing for this sale. The purchaser must provide for payment of the full purchase price in cash at closing.

Submission of Bids: Bids for this property can only be considered for acceptance if submitted on the specific forms listed in the Bid Kit for this property, along with required earnest money. A Bid Kit may be obtained as indicated below.

Suspended or Debarred Parties: No consideration will be given to a bid submitted by any party currently suspended or debarred from participating in HUD programs. AS PROVIDED FOR IN 24 CFR, SEC. 27, THE DEFAULTING MORTGAGOR, OR ANY PRINCIPAL, SUCCESSOR, AFFILIATE, OR ASSIGNEE ON THE MORTGAGE AT THE TIME OF DEFAULT SHALL NOT BE ELIGIBLE TO BID ON OR OTHERWISE PURCHASE THIS PROPERTY. (Principal and Affiliate are defined at 24 CFR 24.905.)

INSPECTION OF PROPERTY AND BIDDING INSTRUCTIONS

Prospective bidders are urged and invited to inspect the property prior to submitting a bid. Note: If this is a foreclosure sale, HUD may not have access to the property. Bids for this property can only be considered if properly submitted by following the bidding instructions provided in the FREE INFORMATION and BID KIT.

The FREE INFORMATION and BID KIT may be viewed or printed at www.hud.gov/offices/hsg/mfh/pd/multifam.cfm. You may also sign up for our electronic mailing list at this web address. If you do not have access to the internet or cannot download a PDF file, you may obtain a bid kit by calling (570) 387-8942, or faxing (570) 387-3303, or by email to hud@mailroometc.com.

BIDS for Wheatview Apartments MUST BE PRESENTED ON:

October 10, 2006
at: 10:00 am local time at:
Ness County Courthouse
(Main floor)
202 W. Sycamore
Ness City, KS 67560

HUD OFFICE:

Fort Worth Region VI
Multifamily PD Center
801 Cherry Street/PO Box 2905
Fort Worth, TX 76113-2905

REALTY SPECIALIST:

Debie Bolin
Phone : (817) 978-5822
debief._bolin@hud.gov

ATTACHMENT B

TERMS AND REQUIREMENTS OF FORECLOSURE SALE - ACKNOWLEDGMENT BY BIDDER

PART I

BID PRICE - The Undersigned, _____, (the "Bidder") submits a bid of _____ dollars (\$) at the foreclosure sale of Wheatview Apartments (the "Project"), the legal description of which is included as Exhibit A, to be paid as follows:

1. \$ 50,000 in the form of a money order, cashier's or other bank check, as earnest money, which has been paid at the foreclosure sale to the person that conducts the foreclosure sale, and which shall not earn interest (the "Deposit"), **and**
2. \$ _____ the balance, to be paid by the Bidder at Closing, in the form of a cashier's or other bank check in accordance with this Acknowledgment. The Closing will be held at a place, date and time established in accordance with Section 5 below (the "Closing").
3. In addition to the above, the Bidder will be required to pay at Closing all closing costs, regardless of local custom, and, where applicable, other deposits to reserve and/or letters of credit as described in Riders incorporated herein, the Invitation for Bid (Invitation), the Foreclosure Sale Use Agreement (Use Agreement), and the Housing Assistance Payment Contract (HAP).

PART II

If selected as the high Bidder at or after the foreclosure sale, the Bidder, by executing this document (the "Acknowledgment"), acknowledges that the Bidder must comply with the following requirements as a condition to purchasing the Project:

1. **ACKNOWLEDGMENT OF TERMS** - Bidder affirms to have full knowledge of the all terms, conditions and requirements contained in this Acknowledgment and documents referred to herein, the invitation and Attachments, and the Notice of Default and Foreclosure Sale. Bidder must execute this document.
2. **EXECUTION OF USE AGREEMENT** - At Closing, Bidder will, in addition to any other documents, execute the Foreclosure Sale Use Agreement and all of the Exhibits to the Use Agreement as contained in the Invitation to Bid. Such documents will control the use of the Project for a specified period and will be recorded with the Deed and run with the land.
3. **CERTIFICATION OF SUBSTANTIAL COMPLIANCE** - The high bidder must also provide Certification to HUD (within two days of the foreclosure sale date) that any other projects that are owned by the high bidder or its affiliates and are located in the same jurisdiction as the project are in substantial compliance with applicable State and/or local housing statutes, regulations, ordinances and codes. HUD may, in its discretion, verify the accuracy of such certification and request supporting documentation from the high bidder. If HUD determines in its sole discretion that such other projects are not in substantial compliance, HUD will have the right to refuse to sell the project to the high bidder and retain the Earnest Money Deposit (see Attachment G).
4. **PREVIOUS PARTICIPATION CERTIFICATION** –
 - (a) **Two Days following Foreclosure Sale:** The high Bidder must submit **within two** (2) Federal Government working days of the foreclosure sale, certification to HUD that the Bidder has registered in APPS and Secure Systems. This certification can be in the form of a copy of the Participant Successfully Registered page from the APPS system **and** a copy of the Multifamily Coordinator and User Registration page from Secure Systems **or** a copy of the Participant Detail page (see APPS User Guide-Industry, Chapter 15, pages 15-2 through 15-4 for printing instructions). The high Bidder is also responsible for submitting any changes necessary for principals, tax ID, and ownership in the APPS system.
 - (b) **Fifteen Days following Foreclosure Sale:** The high Bidder must submit within fifteen (15) Federal Government working days of the foreclosure sale, certification to HUD that the Bidder (owning entity) has completed the 2530 submission process in APPS. This certification must be in the form of a printed copy of the 2530 Submission Package (see APPS User Guide-Industry, Chapter 15, pages 15-2 through 15-4).
5. **ESTABLISHMENT OF CLOSING DATE, TIME AND PLACE**
 - (a) Time is of the essence.
 - (b) HUD will notify the Bidder and the person conducting the foreclosure sale (the "Foreclosure Official") after HUD determines that the Bidder has been approved to purchase this project under the Previous Participation Certification procedure. (Approval to purchase is subject to review and approval of HUD forms as required for purchase in Section 4, Paragraph(s) 2 and 5, and in Attachment B, Terms and Requirements of Foreclosure Sale, Acknowledgement by Bidder specifically the Rider "Submission of Documents Prior to Closing" and applied as checked.) The Foreclosure Official will establish a time and date for the Closing. The Closing **shall be within thirty (30) days of such notification**, unless extended pursuant to Paragraph 8.
 - (c) The Closing will take place at the HUD office stated in the Invitation or at such other place as may be agreed upon between HUD and the Foreclosure Official.
6. **CLOSING, CLOSING EXPENSES AND TRANSFER OF POSSESSION**
 - (a) The sale shall be effective upon Closing.
 - (b) Bidder (Purchaser) shall pay all closing costs and expenses, excluding fees for recording the deed and Use Agreement, irrespective of local custom.
 - (c) Transfer of title to and possession of the Property shall become effective as of the Closing.

7. PAYMENT OF PURCHASE PRICE AT CLOSING - The Bidder (Purchaser) shall pay the balance at Closing in the form of a cashier's or other bank check made out to:

THE SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The Closing will be held at a place, date and time established in accordance with Paragraph 5 above.

8. LIQUIDATED DAMAGES - Should Bidder fail or refuse to perform all obligations under this Acknowledgement for any reason including, but not limited to, failure to establish the legal entity that is to take title in a timely manner that permits Closing within the deadline set forth in Paragraph 5, the earnest money deposit and any extension fees, paid under Section 8, shall be remitted to and retained by HUD as liquidated damages.
9. EXTENSION FEES – Extensions of time to close the sale are within HUD's sole and absolute discretion. Any extensions, if granted, will be on the following conditions:
- (a) A written request for an extension must be received at the HUD office located at: Department of Housing and Urban Development, 801 Cherry Street, Ft. Worth, TX 76102 within ten (10) days prior to the prescribed closing date, or within any extension period and **must be accompanied by the payment** of the required extension fee. The request must state the reason for Bidder's inability to close the sale within the initial period or any extended period.
 - (b) Extensions shall be for thirty (30) days.
 - (c) For each thirty (30) day period requested by Bidder and approved by HUD, extension fees shall be equal to \$ 19.46, per unit, per day, which is \$583.80 daily, a cost of \$ **17,514.00**, which covers the 30-day period (the holding cost for such period) or one and one-half percent (1.5%) of the purchase price, whichever is greater.
 - (d) These fees shall be retained by HUD and shall not be credited to the amount due from Bidder at Closing. However, if Bidder closes prior to the expiration of an extension period, the prorated amount of the extension fee, for the unused portion of the extension period, shall be credited toward the amount due from Bidder at Closing.
 - (e) The granting of one or more extensions shall not obligate HUD to grant additional extensions.
 - (f) If any form or instrument required by HUD is not submitted within sufficient and reasonable time for HUD's review or processing and such delay necessitates an extension of the Closing deadline, an extension fee must be paid for this period.
 - (g) Extension Fees must be submitted by money order, certified, cashier's or other bank check acceptable to HUD.
10. BIDDER RESTRICTIONS
- (a) No Member of/or Delegate to Congress, resident commissioner, or local elected official, shall be admitted to any share or part of this sale, or to any benefit arising from it. However, this provision does not apply to this sale to the extent that this sale is made with a corporation for the corporation's general benefit.
 - (b) If Bidder is, or becomes suspended, debarred, or temporarily denied from participating in HUD programs prior to closing, this sale shall be terminated. In addition, if such suspension, debarment or temporary denial of participation occurs either before or after Bidder's execution of this Acknowledgment, any extension fees paid under Section 8 shall be retained by HUD as liquidated damages.
 - (c) Pursuant to 24 CFR Section 27, the defaulting mortgagor, or any principal, successor, affiliate, or assignee thereof, on the multifamily mortgage being foreclosed, shall not be eligible to bid on, or otherwise acquire, the property being foreclosed by the Department under this subpart or any other provision of law. A "principal" and an "affiliate" are defined as provided at 24 CFR 24.905.
11. AS-IS SALE; NO REPRESENTATIONS
- (a) Bidder shall accept the Property "as is." HUD makes no representations or warranties concerning the physical condition of the Property. In addition, HUD does not represent or warrant the number and occupancy of revenue producing units, or any factor bearing upon the value of the Property.
 - (b) Bidder acknowledges that the purchase price set forth in this Acknowledgment is based on Bidder's evaluation of the project and not upon any representations by HUD. Bidder's failure to inspect, or to be fully informed as to any factor bearing upon the valuation of the Property, shall not affect the liabilities, obligations or duties of HUD, nor be a basis for termination of this sale or for the return of any extension fees paid pursuant to Section 8.
12. RISK OF LOSS AND RIGHTS OF RESCISSION - In the event of any substantial damage to the Project prior to closing by any cause including, but not limited to, fire, flood, earthquake, tornado and significant vandalism other than willful acts or neglect, HUD, in its sole discretion, may negotiate with the Bidder for a reduction in the sales price corresponding to the estimated amount of damages. Such damages shall be added to the Post-Closing repair requirements, Form HUD - 9552 included in the Invitation. If HUD and the Bidder are unable to agree on the amount by which the purchase price should be reduced or on the amendment to the repair requirements, Bidder may withdraw the bid, in which case HUD will direct the return of the earnest money deposit and any extension fee(s) will be returned.
13. PRORATIONS
- (a) Except as set forth in paragraph (b) below, there will be no prorations at Closing. The Bidder will be responsible only for those expenses incurred at the Project after Closing, as well as expenses which may be due and payable at the time of Closing. *Please note that expenses after closing may be inclusive of prior or unpaid services for utilities, assessments and/or liens, which are not extinguished by the foreclosure actions. Prospective purchasers are required to determine outstanding expense/assessment/liens as part of their due diligence and take those outstanding expenses into consideration when submitting bids.*

- (b) At Closing, the Bidder will pay the Foreclosure Official a prorata share of any property taxes on the Project which have been paid for a period of time ending after the date of Closing. The Bidder will be responsible for paying in full, all taxes, that come due after Closing. Taxes paid by the Bidder after Closing will not be prorated, even if those taxes are for a period, which began prior to Closing.
- (c) No later than fifteen (15) days before Closing, HUD will notify the Bidder of the amount the Bidder is to pay the Foreclosure Official as the prorata share of taxes.

14. SECURITY DEPOSITS - APPLICATION AS CHECKED:

- ☒ Notwithstanding State or local law, the Bidder will receive only those security deposits which are on hand at the Project on the date of Closing. The Bidder will assume all liability under State and local law with respect to security deposits.

15. LIMITATION OF LIABILITY - Notwithstanding any other provisions of this sale, HUD's liability shall not exceed the amount of funds paid by Bidder to HUD and/or the Foreclosure Official hereunder.

16. ANTI-COLLUSION CERTIFICATION

(a) The Bidder certifies:

- (i) The bid price in this offer has been arrived at independently, without (for the purposes of restricting competition) any consultation, communication, or agreement with any other Bidder relating to:
- the bid price;
 - the intention to submit a bid price; **or**
 - the methods or factors used in calculating the bid price offered;
- (ii) The bid price in this offer has not been and will not be knowingly disclosed by the Bidder, directly or indirectly, to any other Bidder or competitor before or during the actual time of the bid event, unless otherwise required by law; **and**
- (iii) No attempt has been made or will be made by the Bidder to induce any other Bidder to submit or not to submit a bid price for the purpose of restricting competition.

(b) If the bid procedure requires or permits written bids, each signature on the offer is considered to be certification by the signatory that the signatory:

- (i) Is the person in the Bidder's organization responsible for determining the bid price being offered in this bid and that the signatory has not participated and will not participate in any action contrary to paragraph (a) above; **or**
- (ii) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraph (a), above;

Name: _____

Title: _____

Organization responsible
for determining price

- As an authorized agent, does certify that the principals named in the above have not participated, and will not participate, in any action contrary to paragraph (a) above; **and**
- As agent, has not personally participated, and will not participate, in any action contrary to paragraph (a) above.

17. FAILURE TO COMPLY - Upon the failure or refusal of the Bidder to comply with any of the requirements listed above, HUD may declare the Bidder ineligible to purchase the Project, in which case Bidder shall forfeit the earnest money deposit and any extension fees paid.

18. SEVERABILITY - If for any reason one or more of the provisions contained in the Invitation, including this Acknowledgment, the Use Agreement, or any other attachments or exhibits thereto, shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision(s) of the Invitation, but the Invitation shall be construed as if such invalid, illegal or unenforceable provision(s) had never been included therein.

19. FORMS - All forms and instruments referred to in this Acknowledgment are the standard Form HUD and instruments prepared by HUD and used by HUD in the jurisdiction in which the Property is located and shall contain such additional covenants and conditions required by the Invitation for Bid or Request for Proposals.

20. EXECUTION

(a) By signature below, Bidder indicates acknowledgment of and agreement to the terms and requirements of this foreclosure sale.

(b) In the case of a bid submitted by an agent or representative of the Bidder, the signatory attests to be duly authorized to submit the bid on behalf of the Bidder and to execute this Acknowledgment.

WARNING: It is a crime to knowingly make false statements to the United States in this document or any other document related to this sale. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code, Section 1001 and Section 1010.

Executed by the Bidder on the _____ day of _____, 20_____.

Witness: _____

By: _____

Typed Name: _____

Typed Name: _____

Address: _____

City, ST Zip: _____

Phone No. with Area Code: (____) _____ - _____

RIDER 1 OF 2
**PREVIOUS PARTICIPATION CERTIFICATION AND
SUBMISSION OF DOCUMENTS PRIOR TO CLOSING**

1. Certification of Substantial Compliance

Required within two (2) Federal business days of the foreclosure sale date: The high bidder must also provide Certification to HUD that any other projects that are owned by the high bidder or its affiliates and are located in the same jurisdiction as the project are in substantial compliance with applicable State and/or local housing statutes, regulations, ordinances and codes. HUD may, in its discretion, verify the accuracy of such certification and request supporting documentation from the high bidder. If HUD determines in its sole discretion that such other projects are not in substantial compliance, HUD will have the right to refuse to sell the project to the high bidder and retain the Earnest Money Deposit (see Attachment G).

2. Previous Participation Certification Requirements

Required within two (2) Federal business days of the foreclosure sale date:

For First Time Participants: If you or your company are not registered in HUD's Active Partners Performance System (APPS) and/or HUD's Secure Systems, not later than **two (2)** Federal business days after verbally notified at the foreclosure sale of being the high Bidder, the Bidder must register in APPS, which allows for the electronic submission of the Previous Participation Certification Form HUD 2530 and Secure Systems as outlined in Section 2 of the Invitation to Bid. Bidder must fax a copy of the Participant Successfully Registered page from the APPS system and a copy of the Multifamily Coordinator and User Registration page from the Secure Systems registration to the Realty Specialist identified in the Property at a Glance to (817) 978-5855.

After receiving a Coordinator/User ID, participant must reenter the APPS system and complete the 2530 application process. Not later than **fifteen (15)** Federal business days after verbally notified at the foreclosure sale of being the high Bidder, the high Bidder must fax a copy of the 2530 Submission Package from the APPS system to the Realty Specialist identified in the Property at a Glance to (817) 978-5855.

For Participants Registered in APPS and Secure Systems:

Not later than **two (2)** Federal business days after verbally notified at the foreclosure sale of being high Bidder, the Bidder must fax a copy of the copy of the Participant Detail page to the Realty Specialist identified in the Property at a Glance to (817) 978-5855.

Required within fifteen (15) Federal business days of the foreclosure sale date:

Not later than **fifteen (15)** Federal business days after verbally notified at the foreclosure sale of being the high Bidder, the high Bidder must fax a printed copy of the 2530 Submission Package from the APPS system to the Realty Specialist identified in the Property at a Glance to (817) 978-5855.

NOTE: Any change in ownership entity will require changes (updating) in the APPS system. Participants (Bidder) must adhere to all APPS registration and submission timeframes. Delays in updating the 2530 application will **not** be grounds for delaying any closing, nor will it be grounds for approving an extension of the closing date.

3. Submission of Documents Prior to Closing

Not later than **ten (10)** Federal business days after verbally notified at the foreclosure sale of being the high bidder, the **Bidder must demonstrate the ability to meet HUD requirements** for purchase of the Project by submitting the documents checked below to the Realty Specialist identified on the Property At A Glance.

- ☒ Affirmative Fair Housing Marketing Plan (Form HUD 935.2)
- ☒ Personal Financial and Credit Statement (Form HUD 92417) for each principal and general partner
- ☒ Management Entity Profile (Form HUD 9832)
- ☒ Management Certification (Form HUD 9839 A & B)
- ☒ Project Owner's/Borrowers Certification (Form HUD 9839 C) for Elderly housing projects managed by Administrators only

☒ Bidder's Property Management Statement*:

The bidder must complete and submit written statements of how the Bidder/Owner entity will:

- a. satisfy the conditions of the sale; **and show experience in operating/managing and administration of properties with Project-based Section 8 with the type of clientele as defined in the Project-Based Section 8 Rider;**
- b. implement a sound financial and physical management program;
- c. respond to the needs of the tenants and work cooperatively with tenant organizations; **and**
- d. provide adequate organizational staff and resources to the Project.

☒ Statement of Services, maintenance and utilities that the Bidder/Owner entity proposes to provide.

- * **HUD reserves the right to review and approve/reject project management.** Within a reasonable time prior to Closing, the Bidder/Owner entity may be required to meet with officials designated by HUD at the HUD office listed in this Invitation and/or the local HUD Office to discuss the Bidder's/Owner entity's plans for managing the Project. If HUD determines that the Bidder/Owner entity is unqualified to self-manage the Project, HUD will require the Bidder/Owner entity to obtain the services of a qualified property management firm. The Bidder/Owner entity must then provide HUD with evidence that a qualified property management firm has been retained prior to Closing. If Bidder/Owner entity does not meet this obligation, HUD reserves the right to reject the bid and retain the Bidder's earnest money deposit.

By initialing hereunder, the Bidder acknowledges that this Rider is incorporated into and is a part of the Terms and Requirements of Foreclosure Sale – Acknowledgement by Bidder

Bidder _____

SECTION 8**(and Attachment – Certification of Disclosure of Other Governmental Assistance)****1. PROJECT-BASED SECTION 8 RESTRICTION**

- a. HUD and the Bidder/Purchaser shall execute a Housing Assistance Payments (HAP) Contract, as said form is in effect on the day of Closing, covering the number of units specified by HUD. Execution of the HAP Contract by HUD is subject to the availability of funds and no closing will occur if these funds are not available, in which case the Foreclosure Official may rescind this sale and return the Earnest Money Deposit, Part I, paragraph 1, and any extension fees paid under Part II, paragraph 8. Sending the notice of rescission and returning any fees to the Bidder/Purchaser, or the tender thereof, shall release HUD from any and all obligations and liabilities to Bidder/Purchaser.
- b. Applicable subsidy payments shall accrue pursuant to the HAP Contract. Payments will be made in accordance with the provisions of the HAP Contract.

2. ADJUSTMENT IN SECTION 8 ASSISTANCE PURSUANT TO OTHER GOVERNMENT ASSISTANCE

- a. Bidder must disclose before the Closing:
 - (1) Federal, State or local governmental assistance, other than the Section 8 assistance provided by the Secretary, that it will receive or reasonably expects to receive prior to, or during the term of the Section 8 Housing Assistance Payments (HAP) Contract; **and**
 - (2) In cases where the Bidder will receive or reasonably expects to receive such other assistance, the expected sources and uses of all funds that are to be made available to the Project. Such other assistance includes any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or other form of direct or indirect governmental assistance.
- b. In order to comply with this requirement, the Bidder must, within ten (10) days after receiving notice of selection to purchase the Project, complete and execute the Certification of Disclosure Form exhibit attached hereto. HUD will take the information in the Certification of Disclosure into account in the final computation of the amount of Section 8 assistance that will be provided for the project.
- c. Within thirty (30) days of any changes in circumstances occurring at any time before or during the term of the Section 8 HAP Contract that affects the accuracy of the Certification of Disclosure, the Bidder/Purchaser shall submit to the Seller a revised Certification. The Seller shall reduce the amount of Section 8 assistance provided for the Property to compensate in whole or in part, as the Seller deems appropriate, for any increases in other assistance.

By initialing hereunder, the Bidder acknowledges that this Rider is incorporated into and is a part of the Terms and Requirements of Foreclosure Sale – Acknowledgement by Bidder

Bidder _____

**CERTIFICATION OF DISCLOSURE OF OTHER GOVERNMENT ASSISTANCE
(Attachment to Section 8 Rider)**

TO: FHA COMMISSIONER

Project Name: Wheatview Apartments

Project Number: 102-35096

Project Location: Ness City, Kansas

<input type="checkbox"/>	<p>I will not use any other government assistance in the acquisition, repair or operation of this project, other than the Section 8 assistance provided by HUD under the Housing Assistance Payments Contract. Other government assistance includes, but is not limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.</p> <p>If prior to or during the term of the Housing Assistance Payment Contract I apply for and/or receive other government assistance, I will revise this Certification and meet the requirements set forth below.</p>
<input type="checkbox"/>	<p>I expect to receive, or have received, other government assistance prior to or during the term of the Housing Assistance Payments Contract. The Sources and Uses Statement of such assistance is attached hereto. The above Sources and Uses Statement describes the sources, use and total amount of each form of other governmental assistance that I expect to receive, or have received, and that will be used for the benefit of this project.</p> <p>Within 30 days after any change to the information certified to and disclosed above, I will submit to HUD a revision of this Certification and the attached disclosure.</p>

I certify that the information supplied herein is true and correct to the best of my knowledge.

WARNING: It is a crime to knowingly make false statements to a Federal agency. I understand that the penalties upon conviction can include a fine and imprisonment not to exceed \$10,000 or five years imprisonment, or both. See Title 18 U.S. Code, Sections 1001, 1010, and 1012.

Signature

Date

Name

Title

ATTACHMENT C
FORECLOSURE SALE USE AGREEMENT

This Agreement is entered into by _____ ("Purchaser") and the Secretary of Housing and Urban Development ("Secretary" or "HUD").

WHEREAS, pursuant to the provisions of the Multifamily Mortgage Foreclosure Act, 12 U.S.C. Sections 3701 et seq. (the "Act"), and the Department of Housing and Urban Development's regulations thereunder at 24 C.F.R. Part 27, the Secretary has elected to exercise the nonjudicial power of sale provided under the Act, or pursuant to a judicial foreclosure the Secretary has elected to apply Section 367(b) of the Act, with respect to Wheatview Apartments, HUD Project No. 102-35096, (the "Project" or the "Property") a legal description of which is attached as Exhibit "A"; **and**

WHEREAS, pursuant to the Act and to provisions of 12 U.S.C. Section 1715z-11a(a), Management and Preservation of HUD-Owned Multifamily Housing Projects, and the Department of Housing and Urban Development regulations thereunder at 24 CFR Part 290, the Secretary has authority to impose certain use restrictions, as set forth in this Agreement, on the property subject to a mortgage held by the Secretary that is sold at foreclosure to a purchaser other than HUD; **and**

WHEREAS, by Deed executed this _____ day of _____, 20____, by _____, the Project has been conveyed to the Purchaser; **and**

NOW THEREFORE, in consideration of the mutual promises set forth herein and in further consideration of the sale of the Project to the Purchaser, the parties agree as follows:

1. **TERM OF AGREEMENT** - This Agreement shall be in effect,
☒ twenty years from the date of this Agreement **or** ☐ until _____
2. **CONVEYANCE OF PROJECT**
This paragraph ☒ **is** ☐ **is not** applicable for this property
During the term of this Agreement, any conveyance of the project must have prior written approval of HUD. HUD's approval of conveyance and/or the proposed purchaser's management of the property will be based on information provided in written statements of how the purchaser, or any subsequent purchaser and management, in consideration of any and all existing use restrictions, will:
(a) implement sound financial and physical management program;
(b) respond to the needs of the tenants and work cooperatively with resident organizations;
(c) provide adequate organizational staff and resources to manage the project.
3. **SUBJECT TO EXAMINATION** - The Project shall at all times,
(a) be maintained in decent, safe and sanitary condition to the greatest extent possible,
(b) maintain full occupancy to the greatest extent possible,
(c) be maintained as rental housing for the term of this Agreement.

At the request of the Secretary, Purchaser must supply evidence by means of occupancy reports, physical condition reports, reports on operations, or any evidence as requested to ensure that the above requirements are being met.
4. **UNIT NUMBER OR USE CHANGE** - Changes to the use, number, size, or configuration of residential units in the Project; e.g., apartment units, beds in a care facility, from the use as of the date of this Agreement, must receive the written prior approval of HUD.
5. **NON-DISCRIMINATION REQUIREMENTS** - The Purchaser will comply with the provisions of all Federal, State, or local laws prohibiting discrimination in housing.
6. **HAZARD INSURANCE** - Hazard insurance shall be maintained in an amount to ensure that the Purchaser is able to meet the rental housing requirements described in this Agreement.
7. **DESTRUCTION OF PROJECT** - In the event that any or all of the Project is destroyed or damaged by fire or other casualty, the money derived from any insurance on the Project shall be applied to rebuild or replace the property destroyed or damaged, unless the Secretary gives written approval to use insurance proceeds for other purposes.
8. **DEMOLITION OF PROJECT PROPERTY** - The Purchaser will not demolish any part of the Project or withdraw any part of the Project from use (except as temporarily necessary for routine repairs), without the prior written approval of HUD.
9. **REMEDIES FOR NONCOMPLIANCE** - Upon any violation of any provision of this Agreement by the Purchaser, HUD may give written notice thereof to the Purchaser by registered or certified mail, addressed to the address stated in this Agreement, or such other address as subsequently, upon appropriate written notice thereof to the Secretary, may be designated by the Purchaser as its legal business address. If such violation is not corrected to the satisfaction of the Secretary within thirty (30) days after the date such notice is mailed or within such further time as HUD reasonably determines is necessary to correct the violation, without further notice, HUD may declare a default under this Agreement and may apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of this agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement, and/or such other relief as may

be appropriate, since the injury to the Secretary arising from a default of the terms of the Agreement would be irreparable and the amount of damage would be difficult to ascertain.

The availability of any remedy under the Agreement shall not preclude the exercise of any other remedy under any provision of the law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not construe a waiver of the right to exercise that or any other right or remedy at any time.

10. **SUCCESSORS AND ASSIGNS** - This Agreement is binding upon the Purchaser's heirs, successors and assigns. The Purchaser agrees that if title to the Project is conveyed during the term of this Agreement, the Purchaser will require its purchaser to assume in writing its obligations under this Agreement.
11. **RESTRICTIONS** - No Member of Congress or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of the benefits of the Use Agreement, but this provision shall not be construed to extend to this Use Agreement if the Use Agreement is made with a corporation for its general benefit.
12. **CONTRADICTORY AGREEMENTS** - The Purchaser certifies that it has not, and agrees that it will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions of this agreement, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth herein and supersede any other requirements in conflict with this Agreement.
13. **SEPARABILITY** - The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions hereof.
14. **AMENDMENT** - This Agreement may be amended by the mutual written consent of the parties, except those provisions required by statute.
15. **RIDERS TO THE USE AGREEMENT** - The Riders checked and initialed by the parties are attached to and incorporated into this Use Agreement and will be placed in the Deed to run with the land.
- | | |
|--|---|
| <input checked="" type="checkbox"/> Affordability of Units | <input checked="" type="checkbox"/> Nondiscrimination Against Multifamily Section 8 |
| <input checked="" type="checkbox"/> Reserve Fund for Replacement Account | <input checked="" type="checkbox"/> Cert/Voucher Holders |
| <input checked="" type="checkbox"/> Required Rehabilitation and Relocation | <input checked="" type="checkbox"/> Residency Requirement |
| <input checked="" type="checkbox"/> Lead-Based Paint Hazards | <input checked="" type="checkbox"/> Mold |
| <input checked="" type="checkbox"/> Asbestos Hazards | |
| <input checked="" type="checkbox"/> Project-Based Section 8 Assistance | |

IN WITNESS WHEREOF:

The Purchaser has executed this Use Agreement in triplicate this ____ day of _____, 20____.

WITNESS:

PURCHASER:

By: Signature

Typed Name of Purchaser

Street Address

City, State, Zip Code

The U.S. Department of Housing and Urban Development (HUD) has executed this Use Agreement in triplicate this ____ day of _____, 20____.

WITNESS:

FOR: THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

BY: _____

Official's Typed Name

Title

Exhibit A
Legal Description

A tract of land in the City of Ness City, Kansas, located in the Northeast Quarter (NE/4) of Section 30, Township 18 South, Range 23 West, Ness County, Kansas, decribed as follows:

Beginning at a point on the East line of Topeka Street in the City of Ness City, Kansas, 150 feet South of the Northeast corner of Hospital Addition to the City of Ness City; thence East on a line parallel with the North line of Block 67, Calhoun's Addition to the City of Ness City 150 feet; thence South on a line parallel with the East line of Topeka Street in said City of Ness City 175 feet; thence West on a line parallel with the North line of said Block 67, 150 feet to the East line of Topeka Street in said City of Ness City; thence North along the East line of said Topeka Street 175 feet to the point of beginning.

RIDER 1 OF 9
AFFORDABILITY OF UNITS

The Deed shall contain the following provision:

Housing Assistance Payments (HAP)

As long as the HAP contract is in effect, the HAP will control the rent and eligibility requirements for the residents under the HAP. If the HAP expires, terminates or is not renewed within the affordability term as specified below, this Affordability Rider will control future operations of the property. No resident in place at the time of enactment will be forced to vacate a unit.

Use Restriction

1. The Purchaser (Owner) must maintain the property as affordable housing for a period of twenty (20) years after the date of this Deed or such earlier time as the Secretary may specify in writing (the "Restricted Period").
2. Any change to the number or configuration of residential units required to be maintained, as affordable housing must receive prior written approval from HUD.
3. The Purchaser (Owner) will not unreasonably refuse to lease units to, or otherwise discriminate against, very low-income families.

Income Eligibility Limitation

During the restricted period: (Applicable as checked)

☒ **One level of income eligibility:**

The Purchaser (Owner) may not market 30 dwelling units for any purpose other than affordable housing without HUD's prior written approval. The Purchaser (Owner) may only rent the affordable units to families with adjusted gross annual income that does not exceed eighty percent (80 %) of the area median income, adjusted for family size.

Maintenance of Rents at Affordable Levels

1. For **current** tenants, affordable means **the least of:**
 - (a) for a unit occupied by a very-low income family, the unit rent does not exceed thirty percent (30%) of fifty percent (50%) of the area median income, not necessarily the income of the family, as determined by HUD, with adjustments for family size, less a reasonable utility allowance for utilities paid by the tenant; **or**
 - (b) for a unit occupied by a low-income family that is not a very low-income family, the unit rent does not exceed thirty percent (30%) of eighty percent (80%) of the area median income, (not necessarily the income of the family, as determined by HUD, with adjustments for family size, less a reasonable utility allowance for utilities paid by the tenant; **or**
 - (c) the Section 8 Voucher Payment Standard less the utility allowance established by the voucher provider; **or**
 - (d) Market Rent in the immediate area established by a rent comparability study prepared, at the Purchaser's (Owner's) expense, in accordance with HUD requirements.
2. For **new, or turnover** tenants, affordable means **the least of:** (affordability levels applicable as checked)

☒ (a) the unit rent does not exceed thirty percent (30%) of eighty percent (80%) of the area median income (not necessarily the income of the family), as determined by HUD, with adjustments for family size, less a reasonable utility allowance for utilities paid by the tenant; **or**

(b) the Section 8 Voucher Payment Standard, less the utility allowance established by the voucher provider; **or**

(c) Market Rent in the immediate area established by a rent comparability study prepared, at the Purchaser's (Owner's) expense, in accordance with HUD requirements.

Annual certification

The Purchaser (Owner) shall certify to HUD annually, in a manner acceptable to HUD, that the requirements in the above paragraphs have been fulfilled.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER_____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT_____

RIDER 2 OF 9
RESERVE FUND FOR REPLACEMENT ACCOUNT

The Deed shall include the following provisions:

The Purchaser will deposit at Closing \$30,000.00 into a Reserve Fund for Replacement account. After completion of all repairs, the Purchaser will be required to deposit \$9,000.00 annually into the Reserve Fund for Replacement account (reserve account), payable monthly in an amount of \$750.00 per month, commencing the first day of the first month following completion of all repairs required by HUD on HUD form 9552. If the terms of the sale do not require completion of specific repairs on HUD form 9552, payments must commence the second month the Purchaser vouchers for Section 8 assistance.

Each account will be an interest-bearing bank account and fully guaranteed as to the principal by the United States of America. The reserve account shall aid in funding extraordinary maintenance and repair and replacement of capital items. Such items include, but are not limited to: appliances, heating and cooling equipment, new floor covering, structural repairs, and roofs.

The reserve account shall be subject to the control of HUD and disbursements from such funds may be made only with the written consent of HUD, which will not be unreasonably withheld. Purchaser/Owner may request the release of funds from the reserve account for reimbursement of major capital expenditures.

Within sixty (60) days following the end of each fiscal year, HUD will be furnished with a complete annual financial report including deposits and withdrawals from the reserve account based upon an examination of the books and records of the Purchaser/Owner prepared in accordance with the requirements of HUD, prepared and certified to by a Certified Public Accountant.

The Purchaser/Owner agrees to comply with HUD's rules and regulations concerning replacement reserves.

The requirements of this rider will terminate if the Housing Assistance Payments Contract is terminated or expires and is not renewed or twenty (20) years from the date of this deed, whichever occurs first.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER_____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT_____

RIDER 3 OF 9
REHABILITATION AND RELOCATION

The Use Agreement includes the following provisions:

Rehabilitation and Relocation Restriction

The Purchaser covenants to comply with Section 203(f) of the Housing and Community Development Amendments of 1978, as amended, 12 USC §17012-11(f), and the regulations thereunder, 24 CFR § 290.17, as explained in paragraphs 2 through 5, below. Additionally, the Purchaser covenants to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 USC §4601, and the regulations thereunder, 49 CFR Part 24. The Purchaser is responsible for ensuring compliance with the Act and Regulations, notwithstanding any contractual obligations with third parties to comply with the Act and Regulations.

1. The Purchaser covenants that the Property will be rehabilitated within six(6) months from the date of this Use Agreement in accordance with all applicable State and local laws, codes, ordinances and regulations, and Physical Condition Standards pursuant to 24 CFR Part 5, and other requirements set forth in any repair summaries and narratives, attached hereto.
 - (a) If the Purchaser cannot complete the repairs within the required time, thirty (30) days prior to the expiration of the time allowed a written request for an extension must be delivered to HUD stating the reason for the Purchaser's inability to complete the repairs.
 - (b) The granting of one or more extensions shall not obligate HUD to grant additional extensions.
 - (c) Extensions of time to complete repairs are within HUD's sole and absolute discretion.
2. If temporary or permanent relocation is necessary because of such rehabilitation, Purchaser covenants to provide advance written notice of the expected displacement. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
3. If temporary relocation is necessary because of such rehabilitation, Purchaser covenants to provide assistance to tenants in locating a decent, safe and sanitary dwelling/housing unit, which, to the extent feasible, shall be in a location not generally less desirable than the Property, and reimburse tenants for:
 - (a) Expenses of moving and any net increase in monthly housing cost (rent and reasonable utility costs) during the temporary displacement period.
 - (b) Expenses of returning to a repaired unit on the Property.
4. If permanent relocation is necessary because of such rehabilitation, Purchaser covenants to provide assistance, as described below, to tenants, as may be appropriate:
 - (a) Advisory services, necessary to locate decent, safe and sanitary and affordable replacement housing, which, to the extent feasible, shall be in a location not generally less desirable than the Property.
 - (b) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by HUD to be reasonable considering the size of the household and the circumstances surrounding the move.
HUD will not provide the Purchaser with any funds or subsidy with which to make the payments required by this paragraph.
5. The Purchaser covenants not to increase the rent for any unit, from the rent HUD is requiring a tenant to pay on the Closing date, until such unit meets all the rehabilitation requirements set forth in paragraph 1, above.
6. If the Purchaser fails to comply with paragraph 1 above, and no extension by written agreement has been granted by HUD, the Secretary and/or any and all successors in the office shall be entitled to exercise any available remedies including the right to enter and terminate the estate hereby conveyed.
7. If the Purchaser fails to repair the Project in accordance with this Contract, the Secretary will not exercise the remedies as described in Section 8 above, if any lender holding a lien or security interest on the Project:
 - (a) Gives written notice to HUD within the period provided for repairs, that it intends to complete the repairs ,
and
 - (b) Completes such repairs within thirty (30) days of the notice or within such longer periods as HUD may approve in writing.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER_____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT_____

RIDER 4 OF 9
LEAD-BASED PAINT HAZARDS

The Deed shall include the following provisions:

1. In order to comply with 42 USC §§4821-4886 and the regulations thereunder, 24 CFR Part 35 (the "Regulations"):

☒ Purchaser covenants that the Property will be inspected and tested for lead-based paint, and any hazards will be abated in accordance with the Regulations.

Purchaser shall certify to Seller (in a form acceptable to Seller) and Seller shall determine, through inspection (or discretion, the inspection and certification of a local government official) that all lead-based paint hazards have been removed from the Property in accordance with the Regulations

2. Purchaser shall develop and maintain on the site at all times an Operations and Maintenance Plan which will identify areas which involve lead based-paint hazards and establish work/repair guidelines.
3. Purchaser understands and agrees that Seller's inspection and finding of satisfactory performance is not intended to and does not constitute a guarantee that all lead-based paint and all potential lead-based paint hazards have been eliminated from the Property and does not relieve Purchaser of its ongoing responsibility for complying with all applicable State and local lead-based paint laws and regulations.
4. Purchaser agrees to indemnify, defend, and hold Seller harmless from any liability arising by reason of Purchaser's failure to perform Purchaser's obligations under this Deed with respect to the elimination of lead-based paint health hazards, the prohibition against the use of lead-based paint, and Purchaser's responsibility for complying with applicable State and local lead-based paint laws and regulations.
5. If temporary or permanent relocation is necessary because of such abatement, Purchaser covenants that it will comply with paragraphs 5 through 8, below. Additionally, the Purchaser covenants that it will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("Act"), as amended, 42 USC §4601, and the regulations thereunder, 49 CFR Part 24, when Project-based Section 8 assistance is provided by the Seller. The Purchaser is responsible for ensuring compliance with the Act and regulations thereunder, notwithstanding any contractual obligations with third parties to comply with the Act and regulations. Purchaser covenants to provide advance written notice of the expected displacement to the residents. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
6. If temporary relocation is necessary because of such abatement, Purchaser covenants to provide assistance to tenants in locating decent, safe and sanitary housing:
 - (a) Expenses of moving and any net increase in monthly housing cost (rent and reasonable utility costs) during the temporary displacement period.
 - (b) Expenses of returning to a repaired unit on the Property.
7. If permanent relocation is necessary because of such abatement, Purchaser covenants to provide assistance, as described below, to tenants, as may be appropriate:
 - (a) Advisory services, necessary to locate decent, safe and sanitary and affordable replacement Housing which, to the extent feasible, shall be in a location not generally less desirable than the Property.
 - (b) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by Seller to be reasonable considering the size of the household and the circumstances surrounding the move.
8. The Purchaser covenants not to increase the rent for any units, from the rent Seller is requiring a tenant to pay on the Closing date, until such unit meets all the abatement requirements set forth in paragraph 1, above. (In addition, rent for units to be covered by a Housing Assistance Payments Contract may be increased only pursuant to and following execution of such Contract.)
9. Purchaser agrees to comply with Section 35.88 "Disclosure Requirements for Sellers and Lessors" and Section 35.92 "Certification and Acknowledgement of Disclosure" of 24 CFR – *Lead-Based Paint Poisoning Prevention in Certain Residential Structures*.
10. If Purchaser fails to comply with paragraph 1, above, and no extension by written agreement has been granted by Seller, Seller and/all successors in office shall be entitled to enter and terminate the estate hereby conveyed. This right and remedy may be exercised separately or in combination with the rights and remedies set forth in the Enforcement provision of this Contract.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER_____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT_____

RIDER 5 OF 9
ASBESTOS HAZARDS

The Deed shall include the following provisions:

1. Purchaser agrees to indemnify defend, and hold HUD harmless from any liability arising by reason of Purchaser's failure to perform Purchaser's obligations under this Deed with respect to the elimination of asbestos health hazards, the prohibition against the use of asbestos and Purchaser's responsibility for complying with applicable State and local asbestos laws and regulations.
2. Purchaser shall develop and maintain on the site at all times an Operations and Maintenance Plan which will identify areas which involve asbestos hazards and establish work/repair guidelines.
3. If temporary or permanent relocation is necessary because of such rehabilitation, Purchaser covenants to comply with Section 203(f) of the Housing and Community Development Amendments of 1978, as amended, 12 USC §1701z-11(f), and the regulations thereunder, 24 CFR §290.17, as explained in paragraphs 4 through 6, below. Additionally, the Purchaser covenants to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 USC §4601, and the regulations thereunder, 49 CFR Part 24, when Project-based Section 8 assistance is provided by HUD. The Purchaser is responsible for ensuring compliance with the Act and Regulations, notwithstanding any contractual obligations with third parties to comply with the Act and Regulations. Purchaser covenants to provide advance written notice of the expected displacement. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
4. If temporary relocation is necessary because of such rehabilitation, Purchaser covenants to provide assistance to tenants in locating a decent, safe and sanitary dwelling/housing unit, which to the extent feasible, shall be in a location not generally less desirable than the Property, and reimburse tenants for:
 - (a) Expenses of moving and any net increase in monthly housing cost (rent and reasonable utility costs) during the temporary displacement period.
 - (b) Expenses of returning to a repaired unit on the Property.
5. If permanent relocation is necessary because of such rehabilitation, Purchaser covenants to provide assistance, as described below, to tenants, as may be appropriate:
 - (a) Advisory services, necessary to locate decent, safe and sanitary and affordable replacement housing, which to the extent feasible, shall be in a location not generally less desirable than the Property.
 - (b) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by HUD to be reasonable considering the size of the household and the circumstances surrounding the move.
6. The Purchaser covenants not to increase the rent for any units, from the rent HUD is requiring a tenant to pay on the Closing date, until such unit meets all the rehabilitation requirements set forth in paragraph 1, above.
7. If Purchaser fails to comply with paragraph 1, above, and no extension by written agreement has been granted by HUD, HUD shall be entitled to enter and terminate the estate hereby conveyed. This right and remedy may be exercised separately or in combination with the rights and remedies set forth in the Enforcement provision of this Contract.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER_____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT_____

RIDER 6 OF 9
PROJECT-BASED SECTION 8 ASSISTANCE

The Deed shall include the following provisions:

The Purchaser successor and assigns agree to rehabilitate/repair the property to make the project units decent, safe and sanitary as defined by HUD and to complete the work in accordance with the HUD HAP work write up. Upon the acceptable completion of the project (or on those units if partial releases are previously approved), the owner may bill the Department for housing assistance payments for those ☒ low or ☐ very low income persons (household income below 0 percent of Area Median Income, adjusted for family size) occupying the units assisted under the Housing Assistance Payments (HAP) Contract.

SECTION ONE

1. Significant Dates, Contents, and Scope of the HAP Contract.

- a. Effective Date of the HAP: Upon closing
- b. Date for Commencement of Work – Not later than 10 calendar days after the effective date of this Rider.
- c. Time for Completion of Project: - Not later than 180 calendar days (not to exceed 6 months unless previously approved) after the date for commencement of work.
- d. Final Inspection. HUD (or its designee) shall perform the final inspection of the completed units upon receipt of evidence of completion submitted by the owner.

2. HUD Assurance. The acceptance of this Rider by HUD is an assurance by HUD to the Purchaser that:

- a. The faith of the United States is solemnly pledged to the payment of housing assistance payments pursuant to the Contract, and
- b. HUD has obligated funds for these payments.

3. Purchaser's Failure to Comply with Rider. In addition to other remedies available to HUD for a default by the owner, the Purchaser and HUD agree that if the Purchaser fails to comply with the requirements of this Rider, HUD may rescind the sale of the project or take other appropriate remedial action in accordance with its authority.

4. Definitions:

HUD – Department of Housing and Urban Development

CA – Section 8 Contract Administrator

PBCA – Performance Based Contract Administrator

PHA – Public Housing Authority

HAP – Housing Assistance Payments Contract

PD – Property Disposition

PD Center – Fort Worth or Atlanta Multifamily PD Center

UPCS –Physical Condition Standards, Title 24 CFR, Part 5

CFR – Code of Federal Regulations

USC – United States Code

☐

Definition A – Family and Elderly Family. [24 CFR 5.403]

Family. Family includes but is not limited to:

- (1) A family with or without children (the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size);
- (2) An elderly family;
- (3) A near-elderly family;
- (4) A disabled family;
- (5) A displaced family;
- (6) The remaining member of a tenant family; and
- (7) A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

Elderly Family. Elderly family means a family whose head or spouse or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.

☒

Definition B – Elderly Family. [24 CFR 891.505] Elderly families are:

- (1) Families of two or more persons, the head of which (or his or her spouse) is 62 years of age or older;
- (2) The surviving member or members of a family described in paragraph (1) living in a unit assisted under subpart E of this part (Section 202 loans) with the now deceased member of the family at the time of his or her death;
- (3) A single person who is 62 years of age or older; or
- (4) Two or more elderly persons living together or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well-being.

☐

Definition C – Elderly Person. [24 CFR 891.205] An elderly person is a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy.

☐

Definition D – Disabled Family. [24 CFR 5.403] A disabled family is a family whose head, spouse, or sole member is a person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

☐

Definition E – Person with Disabilities [24 CFR 5.403]. A person with disabilities for purposes of program eligibility:

- (1) Means a person who:
 - (i) Has a disability, as defined in 42 U.S.C. 423;
 - (A) Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or
 - (B) In the case of an individual who has attained the age of 55 and is blind, inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity and over a substantial period of time. For the purposes of this definition, the term blindness, as defined in section 416(i)(1) of this title, means central vision acuity of 20/200 or less in the better eye with use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the

	<p>visual field subtends an angle no greater than 20 degrees shall be considered for the purposes of this paragraph as having a central visual acuity of 20/200 or less.</p> <p>(ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:</p> <p>(A) Is expected to be of long-continued and indefinite duration,</p> <p>(B) Substantially impedes his or her ability to live independently, and</p> <p>(C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or</p> <p>(iii) Has a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)), i.e., a person with a severe chronic disability that</p> <p>(A) Is attributable to a mental or physical impairment or combination of mental and physical impairments;</p> <p>(B) Is manifested before the person attains age 22;</p> <p>(C) Is likely to continue indefinitely;</p> <p>(D) Results in substantial functional limitation in three or more of the following areas of major life activity:</p> <p>a. Self-care,</p> <p>b. Receptive and expressive language,</p> <p>c. Learning,</p> <p>d. Mobility,</p> <p>e. Self-direction,</p> <p>f. Capacity for independent living, and</p> <p>g. Economic self-sufficiency; and</p> <p>(E) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.</p> <p>(2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;</p> <p>(3) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and</p> <p>(4) Means person with disabilities (individual with handicaps), as defined in 24 CFR 8.3, for purposes of reasonable accommodation and program accessibility for persons with disabilities.</p>
<input type="checkbox"/>	<p>Definition F – Disabled Household. [24 CFR 891.305] Disabled household means a household composed of:</p> <p>(1) One or more persons at least one of whom is an adult (18 years or older) who has a disability;</p> <p>(2) Two or more persons with disabilities living together, or one or more such persons living with another person who is determined by HUD, based upon a certification from an appropriate professional (e.g., a rehabilitation counselor, social worker, or licensed physician) to be important to their care or well-being; or</p> <p>(3) The surviving member or members of any household described in paragraph (1) of this definition who were living in a unit assisted under this part (Section 811 Capital Advance) with the deceased member of the household at the time of his or her death.</p>
<input type="checkbox"/>	<p>Definition G – Disabled (Handicapped) * Family. [24 CFR 891.505] Disabled (handicapped) family means:</p> <p>(1) Families of two or more persons the head of which (or his or her spouse) is a person with disabilities (handicapped);</p> <p>(2) The surviving member or members of any family described in paragraph (1) of this definition living in a unit assisted under subpart E of this part (Section 202 loans) with the deceased member of the family at the time of his or her death;</p> <p>(3) A single person with disabilities (handicapped person) over the age of 18; or</p> <p>(4) Two or more persons with disabilities (handicapped persons) living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well-being.</p>
<input type="checkbox"/>	<p>Definition H – Person with a Disability (Handicapped Person). * [24 CFR 891.505 and 891.305] A person with disabilities means:</p> <p>(1) Any adult having a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions.</p> <p>(2) A person with a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)), i.e., a person with a severe chronic disability that:</p> <p>(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;</p> <p>(ii) Is manifested before the person attains age 22;</p> <p>(iii) Is likely to continue indefinitely;</p> <p>(iv) Results in substantial functional limitation in three or more of the following areas of major life activity:</p> <p>(A) Self-care,</p> <p>(B) Receptive and expressive language,</p> <p>(C) Learning,</p> <p>(D) Mobility,</p> <p>(E) Self-direction,</p> <p>(F) Capacity for independent living, and</p> <p>(G) Economic self-sufficiency; and</p> <p>(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.</p> <p>(3) A person with a chronic mental illness, i.e., a person who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and whose impairment could be improved by more suitable housing conditions.</p> <p>(4) Persons infected with the human acquired immunodeficiency virus (HIV) who are disabled as a result of infection with the HIV are eligible for occupancy in the Section 202 projects designed for the physically disabled, developmentally disabled, or chronically mentally ill depending upon the nature of the person's disability. (24 CFR 891.505)</p> <p>Note: A person whose sole impairment is alcoholism or drug addiction (i.e., who does not have a developmental</p>

	disability, chronic mental illness, or physical disability that is the disabling condition required for eligibility in a particular project) will not be considered to be disabled for the purposes of the Section 202 program. (5) A person infected with the human acquired immunodeficiency virus (HIV) and a person who suffers with alcoholism or drug addition, provided they meet the definition of "person with disabilities" in Section 811 (42 U.S.C) 8013(k)(2). A person whose sole impairment is a diagnosis of HIV positive or alcoholism or drug addiction (i.e., does not meet the qualifying criteria in Section 811) will not be eligible for occupancy in a section 811 project. (24 CFR 891.305)
<input type="checkbox"/>	Definition I – Nonelderly Disabled (Handicapped)* Family. [24 CFR 891.505] A nonelderly disabled (handicapped) family means a disabled family in which the head of the family (and spouse, if any) is less than 62 years of age at the time of the family's initial occupancy of a project.

* **NOTE:** The term *handicapped* appears in a number of regulatory definitions that have not yet been updated to reflect current statutes. In this handbook, HUD replaced *handicapped* with the term *disabled*, *disability*, or *impairment* to reflect current statutes. The parenthetical reference to handicapped indicates that the term handicapped has been replaced with disabled, disability, or impairment in that definition.

SECTION TWO

1. Schedule of Completion.
 - a. Timely Performance of Work. The Purchaser agrees to begin work within the time indicated in Section 1 of this Rider. The Purchaser/Owner shall report, within three business days, to the Multifamily Property Disposition (PD) Center the date work has commenced and shall thereafter furnish the PD Center with periodic progress reports (monthly unless more frequent reporting is required by the Center). In the event the work is not commenced, diligently continued, or completed as required under this Rider, the CA, HUD AND/OR PBCA at the direction of the PD Center where the CA AND/OR PBCA is the Public Housing Agency, reserves the right to take such action as it determines appropriate and within its authority.
 - b. If completion is in multiple releases, a minimum of ten (10) % of the units not approved at time of contract execution must be included in each partial release except for the final release. If units are determined acceptable but the number is insufficient to meet the 10% requirement, the Owner may not bill for the units until they have been approved on a partial release. The effective date for the units will be the date of the last inspection of the units added to the partial release.
 - c. The work is defined as "the repair and/or replacements necessary to bring the property into compliance with 24 CFR Part 5 Physical Condition Standards." The work may not be inclusive of the total HUD repair requirement for the project (additional repairs may be required under the Post closing Repair Requirements) and may not result in the release of any or all letter(s) of credit required under the Post Closing Repair Rider.
2. Construction or Rehabilitation Period.
 - a. Inspections. Inspections will be limited to no more than 1 per month. Upon written notification from the Owner that the property or individual units are in compliance with Physical Condition Standards, HUD will order an inspection of the units. If partial releases have been approved, the signature block for the first partial release shall be executed in accordance with 1b above. (The first integral release will be provided to the Purchaser at closing, if any units are determined to meet HUD standards at the time of sale.) The form will reflect the unit numbers and unit types. The chargeable rents will be the rents reflected in Exhibit I of the Housing Assistance Payments (HAP) Contract signed at closing. The owner may begin billing for HAP payments upon receipt of the partial release from HUD for occupied units. Payments may be retroactive to the effective date on the release for occupied units. The effective date for each release will be the inspection date for the last unit added to the partial release. No retroactive payments will be made on vacant units. The Owner will be able to bill on a vacant unit after it has been added to an integral release and becomes occupied. The Owner may not bill for units that have not been inspected by HUD and approved for billing under the HAP. At no time may payments be made for units that do not meet HUD's Uniform Physical Standard.
 - b. Increases in Contract Rents or Utility Allowance. Increases in contract rents or utility allowances during the construction or rehabilitation period are permitted only with HUD approval consistent with HUD regulations.
3. Project Completion.
 - a. The project shall be rehabilitated in accordance with the Physical Condition Standards 24 CFR Part 5. The owner shall be solely responsible for rehabilitation of the project.
 - b. The project shall be in good and tenantable condition.
 - c. The project shall be rehabilitated in accordance with applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.
4. Review and Inspection.
 - a. Upon receipt of the "Certification of Completion" from the Owner, HUD shall order an inspection or notify the Owner if additional evidence of completion is required.
 - b. A HUD representative (or its designee) shall inspect the project in a manner sufficient to enable the inspector to report that he or she has inspected the observable elements and features of the project in accordance with professional standards of care and judgment and that, on the basis of the inspection
 - i. The project or portion thereof been completed in accordance with this Rider, and that
 - ii. There are no observable conditions inconsistent with the certification of the Owner. If the inspection disclosed defects or deficiencies, the inspector shall report these in detail and HUD will notify the Owner of the items that must be corrected.

- c. Unconditional Acceptance. If HUD determines from the review and inspection that the project (or on those units if partial releases are previously approved) has been completed in accordance with this Rider, the Owner and the HUD Field Office (having jurisdiction over the property) shall be promptly notified of the units deemed acceptable and the effective date of the integral release.
 - d. Notification of Non-acceptance. If HUD determines that, based on the review of the Owner's certification of completion and/or HUD's inspection report, the project or portion thereof cannot be accepted, the Owner shall be promptly notified of this decision with a statement of the reasons.
 - e. Contract Rents. The Contract Rents by unit size, amounts of housing assistance payments, and other applicable terms and conditions are specified in the Housing Assistance Payments Contract. The initial Contract Rents shall be the amounts established by HUD and published for the sale.
5. Defaults. Any default under this Rider constitutes a default under the Housing Assistance Payments (HAP) Contract even in the event no funds have been requested and/or paid from said Contract. Any or all remedies outlined in the Contract specifically Part 2, Section 16(b), and the Use Agreement are the remedies that are applicable to a default under this Rider.
6. Assignments, Sale or Foreclosure.
- a. The Purchaser agrees that the ownership entity has not made and shall not make any sale, assignment, conveyance or transfer, of the HAP Contract or the subject property or any of its interest in them, without the prior written consent of HUD (and the PHA where it is the CA and/or PBCA); however, in the case of an assignment as security for the purposes of obtaining financing of the project, HUD (and the PHA where it is the CA and/or PBCA) shall consent in writing if HUD has approved the terms of such financing.
 - b. The Purchaser agrees to notify HUD (and the PHA where it is the CA and/or PBCA) promptly of any proposed action covered by 6(a) above. The Purchaser further agrees to request the prior written consent of HUD (and the PHA where it is the CA and/or PBCA).
 - c. Definitions:
 - i. For the purposes of this part, a sale, assignment, conveyance, or transfer includes but is not limited to one or more of the following:
 - (a) Transfer by the owner, in whole or in part.
 - (b) A transfer by a party having a substantial interest in the Ownership.
 - (c) Transfers by more than one party of interest aggregating a substantial interest in the Ownership,
 - (d) Any significant change in the ownership of interest or in the relative distribution of interest by any other method or means and
 - (e) Any refinancing of the project.
 - ii. An assignment by the Owner to a limited partnership, in which no limited partner has 25 percent or more interest and of which the Owner is the sole general partner, shall not be considered an assignment, conveyance, or transfer. An assignment by one or more general or limited partners of a limited partnership interest to a limited partner, who will have no more than a 25 percent interest, shall not be considered an assignment, conveyance, or transfer.
 - iii. The term "substantial interest" means any interest of a general partner, corporate officer or Director, any limited partner having a 25 percent or more interest in the organization, or any stockholder having a 10 percent or more interest in the organization.
 - iv. Notwithstanding the foregoing, a merger, conversion, share exchange, or interest exchange of corporate or partnership interest will be considered a transfer of the property and require the approval of HUD if property is sold with an Equity Participation Rider.
 - d. The party executing this Rider on behalf of the Purchaser certifies that he/she has the requisite authority to bind the ownership and to execute this rider on behalf of the Purchasing Entity.
 - e. Except where otherwise approved by HUD, this Rider and the HAP Contract shall continue in effect in the event:
 - i. Of assignment, sale, or other disposition of the project,
 - ii. Of foreclosure of any mortgage note secured by the subject property,
 - iii. Deed in lieu of foreclosure of the subject property, or
 - iv. The PHA or HUD takes over possession, operation or ownership of the subject property.

SECTION THREE

1. Project-based Section 8 Assistance.
- a. A Housing Assistance Payments (HAP) Contract will be executed at closing. The HAP Contract will cover 30 units in the Property, as specified by HUD. **The Purchaser agrees to accept the Project Based Section 8 Housing Assistance Payments Contract.**
 - b. The HAP Contract shall provide that, when a vacancy occurs in any unit in the property requiring project-based Section 8 assistance, Purchaser shall rent the unit to a family that is eligible for said Section 8 assistance under the HAP Contract.
 - c. The Purchaser agrees that, for any property formerly insured under Section 221(d)(3) or 236 of the National Housing Act, or for which a direct loan under Section 202 of the Housing Act of 1959 was made, any unit in the Property that does not receive project-based Section 8 assistance shall remain available and affordable for a period of 20 years under the terms of the Affordability of Units Rider.
 - d. The Purchaser agrees that at anytime the HAP Contract expires, is terminated or not renewed, the Affordability of Units Rider will become applicable to the units previously covered under the HAP Contract. The purchaser may reduce the term of the Affordability of Units Rider for such units by the collective term(s) of the HAP Contract and any subsequent renewals effective after this sale.

2. The Purchaser cannot voucher for Section 8 HAP payments until HUD has inspected the units and determined that they meet the Physical Condition Standards (PCS) of the HAP Contract. Section 8 assistance payments will not be made retroactive to the date of closing. Retroactive payments will not be made on vacant units. Assistance/subsidy will only be paid on occupied units from the effective date on the partial release (or final release if partial releases were not approved) reflecting that the unit(s) was determined to meet the Physical Condition Standards (as per Section 2 Provisions 2 and 4).
3. Prior to receipt of subsidy payments, Purchaser shall not charge Section 8 eligible tenants more than the amount of the Total Tenant Payment (per the Form HUD-50059) the tenant would be required to pay under the Section 8 program.
4. Other Government Assistance and Adjustments in Project-Based Section 8 Assistance.
 - a. In order to comply with Section 102 of the Department of Housing and Urban Development Reform Act of 1989, and the regulations thereunder, 24 CFR Part 12, Purchaser covenants that it will disclose to Seller:
 - i. Any Federal, State or local governmental assistance, other than the Section 8 assistance provided under the terms of this Deed, that it will receive or reasonably expects to receive prior to or during the term of the Section 8 HAP Contract.
 - ii. In cases where the Purchaser will receive or reasonably expects to receive such other assistance, the expected sources and uses of all funds that are to be made available for the Property. Such other assistance includes any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect governmental assistance.
 - b. In order to comply with this requirement, the Purchaser, within 10 working days after receiving notice that he/she has been selected to purchase the Property, must complete and execute a Certification of Disclosure.
 - c. Within 30 calendar days of any changes in circumstances occurring at any time before or during the term of the Section 8 HAP Contract that affect the accuracy of the Certification of Disclosure, the Purchaser/Owner shall submit to HUD a revised Certification. HUD may reduce the amount of Section 8 assistance provided for the Property to compensate in whole or in part, as the Department deems appropriate, for any increases in other assistance.
5. Affordability and Availability of Project-based Section 8 Units. In order to assure compliance with 12 USC §1715z-11a(a), the Secretary of HUD, pursuant to a HAP Contract, will provide housing assistance under Section 8 of the United States Housing Act of 1937 (42 USC §1437f) for the Property. During the term of the HAP Contract, the Owner shall maintain all dwelling units covered thereby after the date of this Deed in accordance with the requirements of the HAP Contract and the Section 8 Housing Assistance Payments Program For Elderly Families (24 CFR Part 891.505). Any inconsistencies between the CFR (cited above) and the HAP Contract, the HAP Contract will prevail.

The Purchaser shall not remove any existing tenant solely due to the tenant's ineligibility for Section 8 assistance, so long as the tenant remains in good standing. However, if an existing Section 8 ineligible tenant moves/relocates from the property, the Owner shall rent the unit to a Section 8 (24 CFR Part 891.505) eligible family, if the unit is assisted under the HAP Contract. This provision shall be enforceable by the HUD, Eligible Families or any other tenants on the Property.
6. The Purchaser agrees to accept project-based Section 8 assistance and shall execute a Housing Assistance Payments Contract at closing, and to accept any subsequent renewal offers. Should HUD elect not to extend future Section 8 assistance or not renew the HAP Contract or any subsequent rental assistance offered by HUD, residents who are in place at the time the HAP contract expires, terminates, or is not renewed, shall not be required to pay rent in excess of the amount that would have been required if the assistance was in place. All units that were assisted under the HAP Contract(s) are restricted for the term of the Use Agreement to occupancy by eligible families with incomes at or below 80% (level on current HAP) of the area median income. The rental payments by these families shall not exceed 30% of adjusted monthly income for residents in place at the time the HAP Contract was active and not to exceed 30% of Area Median Income, adjusted for family size for future residents.

7. ☒ Applicable if checked: The following is a list of units that HUD will release for billing under the HAP contract after HUD has determined that the units have been rehabilitated to meet the Physical Condition Standards in 24 CFR Part 5:

Unit Number Type (Efficiency, 1, 2, 3 ... bedroom)					
Unit Number	Type (Eff., 1, 2 Bdr)	Unit Number	Type (Eff., 1, 2 Bdr)	Unit Number	Type (Eff., 1, 2 Bdr)
1A	1 Bdr	1B	1 Bdr		
1D	1 Bdr	1E	1 Bdr	1F	1 Bdr
		1H	1 Bdr	2A	1 Bdr
2B	1 Bdr	2C	1 Bdr	2D	1 Bdr
2E	1 Bdr	2F	1 Bdr	2G	1 Bdr
2H	1 Bdr	3A	1 Bdr	3B	1 Bdr
3C	1 Bdr	3D	1 Bdr	3E	1 Bdr
3F	1 Bdr	3G	1 Bdr	3H	1 Bdr
4A	1 Bdr	4B	1 Bdr	4C	1 Bdr
4D	1 Bdr	4E	1 Bdr	4F	1 Bdr
4G	1 Bdr	4H	1 Bdr		

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

PURCHASER _____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

Partial Release _____

The following units have been inspected and determined to meet Physical Condition Standards. The effective date of this release is _____. For the following units occupied at the time of inspection, the Owner may bill retroactively to this date. For vacant units listed below, the owner may commence billing the effective date of the lease for occupancy to commence. The rent and any required utility allowance is reflected in the Housing Assistance Payments Contract executed at closing.

[illegible]

Secretary of Housing and Urban Development

By: _____

Official Title: _____

Date: _____

**NONDISCRIMINATION AGAINST MULTIFAMILY SECTION 8 CERTIFICATE HOLDERS AND VOUCHER
HOLDERS**

(Applies to Rental Housing not covered by a HAP Contract)

The Use Agreement includes the following provisions:

Voucher

If the Housing Assistance Payments Contract (HAP) is terminated, expires and/or not renewed, or rental units not covered by the HAP Contract, this rider will control operations of the property.

Nondiscrimination

In order to comply with Section 204 of the Housing and Community Development Amendments of 1978, 12 USC §1701z-12, as amended, the Purchaser, any/all successors and assigns, agrees not to unreasonably refuse to lease a dwelling unit offered for rent, offer or sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 USC §1437f), or any successor legislation (hereinafter referred to as Section 8). This provision is limited in application, for tenants or applicants with Section 8 Certificates or Vouchers, to those units that rent for an amount not greater than the Section 8 fair market rent for a comparable unit in the area as determined by HUD.

If the Purchaser breaches this provision, HUD and/or one or more third - party beneficiaries, shall be entitled to institute legal action to enforce performance and observance of such provision and to enjoin any acts which are in violation of such provision. For the purposes of this provision, a third-party beneficiary shall be any person who holds a Certificate of Family Participation or a Voucher under Section 8 or any equivalent document under successor legislation.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER_____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT_____

RIDER 8 OF 9
MOLD HAZARDS

The Deed shall include the following provisions:

1. Purchaser agrees to indemnify defend, and hold HUD harmless from any liability arising by reason of Purchaser's failure to perform Purchaser's obligations under this Deed with respect to the elimination of mold health hazards, and Purchaser's responsibility for complying with applicable Environmental Protection Agency's regulations and State and local laws and regulations.
(a) Purchaser covenants that the Property will be inspected and tested for mold and mold conditions, and any hazards will be remediated, The purchaser will remediate the mold or mold conditions in accordance with the relevant provisions of the Environmental Protection Agency regulatory standards and guidelines.
(b) Purchaser covenants that any mold hazards will be remediated in accordance with applicable federal state, and local laws, regulatory standards and guidelines, including without limitation the Environmental Protection Agency (EPA) Guidelines.
2. Purchaser shall develop and maintain on the site at all times an Operations and Maintenance Plan which will identify areas which involve mold hazards and establish work/repair guidelines.
3. If temporary or permanent relocation is necessary because of such rehabilitation, Purchaser covenants to comply with Section 203(f) of the Housing and Community Development Amendments of 1978, as amended, 12 USC §1701z-11(f), and the regulations thereunder, 24 CFR §290.17, as explained in paragraphs 4 through 6, below. Additionally, the Purchaser covenants to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 USC §4601, and the regulations thereunder, 49 CFR Part 24, when Project-based Section 8 assistance is provided by HUD. The Purchaser is responsible for ensuring compliance with the Act and Regulations, notwithstanding any contractual obligations with third parties to comply with the Act and Regulations. Purchaser covenants to provide advance written notice of the expected displacement to the residents. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
4. If temporary relocation is necessary because of such rehabilitation, Purchaser covenants to provide assistance to tenants in locating a decent, safe and sanitary dwelling/housing unit, which to the extent feasible, shall be in a location not generally less desirable than the Property, and reimburse tenants for:
(a) Expenses of moving and any net increase in monthly housing cost (rent and reasonable utility costs) during the temporary displacement period.
(b) Expenses of returning to a repaired unit on the Property.
5. If permanent relocation is necessary because of such rehabilitation, Purchaser covenants to provide assistance, as described below, to tenants, as may be appropriate:
(c) Advisory services, necessary to locate decent, safe and sanitary and affordable replacement housing, which to the extent feasible, shall be in a location not generally less desirable than the Property.
(d) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by HUD to be reasonable considering the size of the household and the circumstances surrounding the move.
6. The Purchaser covenants not to increase the rent for any units, from the rent HUD is requiring a tenant to pay on the Closing date, until such unit meets all the rehabilitation requirements set forth in paragraph 1, above. In addition, rent for units to be covered by a Housing Assistance Payments Contract may be increased only pursuant to and following execution of such Contract.
7. If Purchaser fails to comply with paragraph 1, above, and no extension by written agreement has been granted by HUD, HUD shall be entitled to enter and terminate the estate hereby conveyed. This right and remedy may be exercised separately or in combination with the rights and remedies set forth in the Enforcement provision of this Contract.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER_____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT_____

RIDER 9 OF 9
RESIDENCY REQUIREMENT

The Use Agreement shall include the following provisions:

1. The Purchaser covenants that 100% of the units in the Property will be maintained as rental housing for elderly families and individuals for a period of (20) years after the date of the Deed or such earlier time as the Seller may specify in writing (the "Restricted Period"). Any change in the number of units must receive the prior written approval of the Seller.
2. During the Term of Agreement, the Owner may not market 30 dwelling units for any purpose other than affordable housing for Elderly Families (as defined in **24 CFR 891.505**). If the Owner is temporarily unable to lease all of the specified number of dwelling units to Elderly Families, one or more units may be leased to families who are not Elderly, only with HUD's prior written approval. In requesting such approval, the Owner must demonstrate that:
 - (a) reasonable steps have been taken to attract Elderly Families, including using marketing activities most likely to attract such eligible applicants, **and**
 - (b) has leased or is making good-faith efforts to lease the units to eligible and otherwise acceptable Elderly Families, including taking all feasible actions to fill vacancies by renting to such families, **and**
 - (c) has not rejected any such applicants except for reasons acceptable to HUD.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER_____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT_____

7.13 Mold Screening

ATC conducted a screening survey for mold conditions at the property. The screening consisted of limited interview, document review and physical observation. ATC conducted a limited visual investigation of the property to evaluate the possible presence and extent of water intrusion damage and potential mold contamination.

ATC requested documentation regarding current or historic mold conditions at the property. No documentation was provided to ATC for review.

During the site reconnaissance, ATC conducted a physical observation of certain HVAC system areas and other representative building areas as described in Section 3.2. ATC was escorted by the Maintenance Supervisor (MS) of Wheatview Apartments, who provided access and answered questions. Water damage was observed on the ceilings and along the AC ducts located in the AC closets on the fourth floor. Suspected mold growth was observed on the ceiling of the AC closet located on the fourth floor. ATC spoke with the MS regarding the observed water damage and it was explained that previous leak investigations have occurred; however, the source of water entry was not located. Water damage was also observed on the exterior of the fiberglass insulation that surrounds the roof drainage piping located in several kitchen closets on various floors. The water damage was isolated to the insulation and was not observed on the ceilings of the kitchen closets.

ATC observed one isolated case of apparent mold growth on the exterior of an individual HVAC closet, presumably caused by condensation. Based on the results of the interview, document review, and physical observation, the isolated incident does not present evidence indicating potential mold impact throughout the property.

9.0 ENVIRONMENTAL SAMPLING

9.1 Asbestos-Containing Material (ACM)

Typical building materials that contain asbestos are found in a variety of types and uses. Frequently encountered types of ACMs used in building construction include floor tile, sheet flooring, mastic, ceiling tile, spray-applied acoustical/decorative ceiling materials, plaster, wallboard, wallboard joint compound, insulation, roofing and flashing, and many other materials in common use prior to 1978. ACMs also may be present in debris piles containing discarded building construction materials and are occasionally in surficial soils in industrial or similar areas. In Kansas, materials that contain one percent (1%) asbestos fibers or more are considered ACMs and must be handled according to the Kansas Department of Health and Environment (KDHE), Air Pollution Control regulations if disturbed.

Suspect ACM observed at the property at the time of ATC's reconnaissance included spray-applied acoustical/decorative ceiling materials, drywall, cove base mastic, vinyl sheet flooring, and 12-inch by 12-inch resilient floor tile. All suspect ACM observed at the time of ATC's reconnaissance appeared to be in good condition.

According to Ms. Clouston, previous ACM reports or information was not available for the Property.

ATC conducted an Asbestos Survey on September 21, 2005, accessible common and mechanical areas as well as 10% of the residential units. The survey was limited to the collection of 30 samples for asbestos analysis.

The bulk samples collected on September 21, 2005 were analyzed at Hygeia Laboratories, Inc. in Sierra Madre, California, by polarized light microscopy (PLM) utilizing dispersion staining techniques according to USEPA Method for the Determination of Asbestos in Building Materials (EPA 600/R-93/116). The Hygeia Laboratories, Inc. is accredited for PLM analysis by the National Voluntary Laboratory Accreditation Program (NVLAP). A total of 30 bulk samples were collected and analyzed. A copy of the laboratory analytical results is included in Appendix J.

Prior to collecting bulk samples, homogenous areas (HAs) were determined for sampling purposes. A list of the observed and sampled or assumed HAs follows:

- HA#1 White spray-applied acoustical/decorative ceiling texture
- HA#2 White drywall
- HA#3 Cove base mastic
- HA#4 Green and white sheet flooring
- HA#5 Mastic under sheet flooring
- HA#6 White and brown mottled 9''x 9'' floor tile
- HA#7 Mastic under floor tile
- HA#8 Black roof tar
- HA#9 Black rubber roofing material

The laboratory analytical results indicate that asbestos is present > 1% at the property in the following HAs:

HA	Material	Location	Friability and NESHAP Category	Condition	Amount
7	White and brown mottled 9"x 9" floor tile	1 st floor women's restroom	Category 1 Non-Friable	Good	250 sq. ft. (possible other areas)
sq. ft. = square feet					

Based upon guidelines set forth by OSHA and EPA, damaged Friable ACMs should be repaired or abated. Workers who come into contact with ACM must be trained in accordance with OSHA requirements. If the materials are to be removed the asbestos abatement work should be performed by a Kansas-licensed asbestos abatement contractor in accordance with the OSHA, KDHE, and local regulations. A copy of the PLM Survey Report and chain of custody documentation is included in Appendix F.

9.2 Lead-Based Paint (LBP)

Based on the 1978 construction date of the property improvements and at the request of the client, ATC conducted an inspection for LBP per the 1997 revision of U.S. Department of Housing and Urban Development (HUD) "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing." In accordance with the HUD Guidelines, ATC surveyed 19 apartment units and 14 common areas for LBP. A State-certified inspector utilized a portable, calibrated spectrum x-ray fluorescence (XRF) analyzer in accordance with the manufacturer's instructions to measure lead concentrations within paint at selected dwelling units and common areas. Paint chip samples were collected from uneven surfaces that were not suitable for reading with the XRF (i.e. rounded surfaces), and were analyzed by Hygeia Laboratories, Inc. in Sierra Madre, California using EPA Method 7420. The sampling strategy was based on the procedures outlined by the HUD "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing." A copy of the XRF Survey Report, paint chip laboratory analysis report, and chain of custody documentation is included in Appendix F.

ATC conducted a total of 524 XRF readings and collected a total of 4 paint chip samples. Results of the LBP screening survey indicated that no XRF samples tested as positive for lead (greater than 1.0 mg/cm²). Furthermore, no paint chip samples contained lead above the laboratory reporting limit of 120 mg/kg, or 0.012% lead by weight. All painted surfaces were noted to be in good condition at the time of the assessment.

10.0 FINDINGS AND OPINIONS

The following summarizes known or suspected environmental conditions in connection with the property based on information collected during the ESA. For each condition, ATC provides an opinion of the impact on the property based on an evaluation of the results of record reviews, site reconnaissance and environmental sampling issues as discussed in this report. ATC also provides a conclusion and rationale regarding whether or not an environmental condition is a *recognized environmental condition*.

- ATC conducted an Asbestos Survey on September 21, 2005, of accessible common areas, tenant spaces, office and maintenance areas, and 10% of the units. The asbestos survey included the collection of 30 bulk samples of suspect asbestos containing material (ACM) identified during the September 21, 2005 site reconnaissance. Laboratory analyses of the September 21, 2005 bulk sampling event identified ACM in the form of mastic under the white and brown mottled 9" by 9" vinyl floor tile. This material is considered Category 1 non-friable and ATC observed approximately 250 square feet in the 1st floor restrooms and laundry room. All building materials and finishes were noted to be in good condition at the time of the assessment.
- ATC conducted an inspection for LBP per the 1997 revision of U.S. Department of Housing and Urban Development (HUD) "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing." In accordance with the HUD Guidelines, ATC surveyed 19 apartment units and 14 common areas for LBP. The sampling strategy was based on the procedures outlined by the HUD "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing." ATC conducted a total of 524 XRF readings and collected a total of 4 paint chip samples. Results of the LBP screening survey indicated that no XRF samples tested as positive for lead (greater than 1.0 mg/cm²). Furthermore, no paint chip samples contained lead above the laboratory reporting limit of 120 mg/kg, or 0.012% lead by weight. All painted surfaces were noted to be in good condition at the time of the assessment.

U. S. Department of Housing and Urban Development
Office of Housing
Property Disposition

Federal Fiscal Year 2006

Section 8 Project-Based Rental Assistance

Housing Assistance Payment Contract

Attachment F

Preparation of HAP Contract

Instructions on preparation of the HAP contract are attached at the end of the HAP contract text. Superscripts 1 through 5 in the text of Section 1 of the contract refer to notes at the end of the contract.

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HAP CONTRACT NUMBER KS400156011
HOUSING ASSISTANCE PAYMENT CONTRACT
PART I

1. Contract Information¹

A. Property:

Section 8 Project Number: KS400156011

Section 8 Project Number of prior HAP contract for property: KS400156011

FHA Project Number (if applicable): 102-35096

Property Name: Wheatview Apartments

Property Description²: A tract of land in the City of Ness City, Kansas, located in the Northeast Quarter (NE/4) of Section 30, Township 18 South, Range 23 West, Ness County, Kansas, described as follows:

Beginning at a point on the East line of Topeka Street in the City of Ness City, Kansas, 150 feet South of the Northeast corner of Hospital Addition to the City of Ness City; thence East on a line parallel with the North line of Block 67, Calhoun's Addition to the City of Ness City 150 feet; thence South on a line parallel with the East line of Topeka Street in said City of Ness City 175 feet; thence West on a line parallel with the North line of said Block 67, 150 feet to the East line of Topeka Street in said City of Ness City; thence North along the East line of said Topeka Street 175 feet to the point of beginning.

B. Contents of Contract

This is a housing assistance payments contract (HAP contract) between HUD and the owner. The HAP contract consists of Part I, Part II and the contract exhibits listed in paragraph C.

C. Contract Exhibits

Exhibit A: SITE PLAN, LEGAL DESCRIPTION, OR OTHER DESCRIPTIVE INFORMATION³.

Exhibit B: ANY ADDITIONAL INFORMATION DESCRIBING PHYSICAL CONDITION, LOCATION, AND/OR PLANS OF THE CONTRACT UNITS.⁴

Exhibit C⁵:

D. Effective date and term of HAP contract

- i. *Effective Date: Upon closing*
- ii. *Length of Term: 20 years, subject to appropriations*
- iii. *Anniversary Date: One year from the closing date*

EXECUTION OF CONTRACT

United States Department of Housing and Urban Development (HUD)

Owner: Name of Owner (print below)

By: Signature of authorized representative

By: Signature of authorized representative

Name and official title (Print)

Name and title (Print)

Date

Date

HOUSING ASSISTANCE PAYMENT CONTRACT PART II

2. DEFINITIONS

CA. Contract administrator. The agency that has entered into the HAP contract with the owner. The agency is HUD or a public housing agency as defined in the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6)).

Contract rent. The total monthly rent payable to the owner for a contract unit, including the tenant rent. Contract rent includes payment for any housing services, maintenance, and utilities to be provided by the owner in accordance with the HAP contract.

Contract units. The housing units covered by this HAP contract. The contract units are described in Exhibit A by unit size (number of bedrooms) and applicable initial contract rents.

Family. The person(s) approved by the CA to reside in a contract unit with assistance under the program.

HAP contract. This housing assistance payment contract between the CA and the owner. The contract consists of Part I, Part II and the contract exhibits (listed in paragraph 1C of the HAP contract).

HUD. U.S. Department of Housing and Urban Development.

HUD requirements. HUD requirements are issued by HUD headquarters as regulations, Federal Register notices, or other binding program directives.

PHA. A public housing agency (as defined and qualified in accordance with the United States Housing Act of 1937,. 42 U.S.C. 1437 et seq.).

Physical condition standards (PCS). The HUD minimum physical condition standards for dwelling units occupied by families receiving Section 8 project-based assistance. Click link provided below to view Uniform Physical Condition Standards for HUD housing that is decent, safe, sanitary and in good repair (24 CFR Part 5): http://www.hudclips.org/sub_nonhud/cgi/nph-brs.cgi?d=C24D&s1=@docn&l=100&SECT1=TXTHLB&SECT5=C24D&u=../hudclips.cgi&p=2&r=146&f=G

Premises. The building or complex in which a contract unit is located, including common areas or grounds.

Principal or interested party. This term includes a management agent and other persons or entities participating in property management, and the officers and principal members, shareholders, investors, and other parties having a substantial interest in the HAP contract, or in any proceeds or benefits arising for the HAP contract.

Property. The housing designated in paragraph I.A. of the HAP contract.

Section 8. Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

Section 311. Section 311 of the Administrative Provisions at Division A, Title III of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia and Independent Agencies Appropriations Act, 2006, Pub. L. No. 109-115, 119 Stat. 2396 (2005).

Tenant rent. The portion of the contract rent payable by the family, as determined by the CA in accordance with HUD requirements. The CA is not responsible for paying any part of the tenant rent.

3. PURPOSE

- 1) This is a HAP contract between HUD and the owner. The HAP contract is entered pursuant to Section 8 and Section 311.
- 2) Section 311 provides that in fiscal year 2006, in managing and disposing of any multifamily property that is owned or held by the Secretary of HUD, the Secretary shall maintain any project-based rental assistance payments under Section 8.
- 3) The contract units are located in a multifamily property. HUD has conveyed the property to the owner. Prior to HUD acquisition of the property, occupancy of the contract units had been assisted by project-based rental assistance payments under Section 8. The HAP contract is entered to maintain Section 8 project-based rental assistance for the contract units in accordance with Section 311.
- 4) The purpose of the HAP contract is to provide housing assistance payments on behalf of eligible families who lease and occupy contract units that comply with HUD PCS. Housing assistance payments will only be paid to the owner for contract units occupied by eligible

families who lease contract units from the owner in accordance with statutory requirements, and with all HUD regulations and other HUD requirements.

- 5) Both at the beginning of the contract term and at all times thereafter during the contract term, housing assistance payments will only be paid for contract units that comply with the PCS. Housing assistance payments will not be paid for any period when the contract units do not comply with the PCS.
- 6) If HUD is the CA, HUD may, at HUD's discretion, transfer administration of the HAP contract to a public housing agency acting as the CA under an annual contributions contract (ACC) with HUD.
- 7) The CA must make housing assistance payments to the owner in accordance with the HAP contract for contract units leased and occupied by eligible families during the HAP contract term.

4. OCCUPANCY AND PAYMENT

A. Payment for occupied unit

During the term of the HAP contract, the CA shall make housing assistance payments to the owner for the months during which a contract unit is leased to and occupied by an eligible family, as determined in accordance with HUD requirements. If an assisted family moves out of a contract unit, the owner may keep the housing assistance payment for the month when the family moves out.

B. Occupancy by eligible families

During the contract term, the owner shall lease all of the contract units to eligible families. Eligibility shall be determined in accordance with HUD requirements.

C. Vacancy payment

- 1) The owner may receive housing assistance payments for so much of the month in which the family moves out of a contract unit as the contract unit remains vacant.
- 2) If the unit remains vacant after the move-out month, the owner may receive a housing assistance payment in the amount of 80 percent of the contract rent for a vacancy period not to exceed an additional month after the month when the family moves out. However, if the owner collects any of the tenant rent for this month, the payment for the vacancy period must be reduced to an amount which, when added to the family's payments, does not exceed 80 percent of the contract rent.
- 3) The owner shall not receive any vacancy payment under this paragraph C, unless the owner:
 - a) Immediately upon learning of the vacancy, has notified the CA of the vacancy, or prospective vacancy, and the reason for vacancy,
 - b) Takes all feasible actions to fill the vacancy, including contacting applicants on the owner's waiting list, conducting appropriate outreach for eligible families, and advertising the availability of the unit; and
 - c) Has not rejected any eligible applicant, except for good cause acceptable to the CA.

5. CONTRACT RENT; HOUSING ASSISTANCE PAYMENTS

A. Amount of initial contract rent

The initial contract rent for each contract unit is stated in Exhibit A of the HAP contract. At the beginning of the HAP contract term, and until the contract rent is adjusted in accordance with section 6 of the HAP contract, the contract rent for each bedroom size (number of bedrooms) shall be the initial contract rent amount listed in Exhibit A.

B. HUD rent requirements

Notwithstanding any other provision of the HAP contract, the contract rent may in no event exceed the amount authorized in accordance with HUD requirements.

C. CA payment to owner

- 1) Each month the CA must make a housing assistance payment to the owner for a unit under lease to and occupied by an eligible family in accordance with the HAP contract.
- 2) The monthly housing assistance payment to the owner for a contract unit is equal to the amount by which the contract rent exceeds the tenant rent.
- 3) Payment of the tenant rent is the responsibility of the family. The CA is not responsible for paying any part of the tenant rent, or for paying any other claim by the owner against a family. The CA is only responsible for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract.

- 4) The owner will be paid the housing assistance payment under the HAP contract on or about the first day of the month for which payment is due.
- 5) To receive housing assistance payments in accordance with the HAP contract, the owner must comply with all the provisions of the HAP contract. Unless the owner complies with all the provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.
- 6) If the CA determines that the owner is not entitled to the payment or any part of it, the CA, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the owner, including amounts due under any other housing assistance payments contract.
- 7) The owner must notify the CA promptly of any overpayment or any change of circumstances that would affect the amount of the monthly housing assistance payment, and must return the amount of any overpayment.

6. ADJUSTMENT OF CONTRACT RENT

A. Determination of adjusted rent

- 1) During the term of the HAP contract, the CA shall annually, on the anniversary date, adjust the amount of the monthly contract rents in accordance with HUD requirements by using an OCAF (operating cost adjustment factor).
- 2) The owner shall not receive any other adjustment of the contract rent.

B. Maximum rent

Contract rent for each contract unit, as adjusted annually by the CA in accordance with section 6 of the HAP contract, may at no time exceed reasonable rent, as determined by the CA, charged for comparable units in the private unassisted market.

C. Owner compliance with HAP contract

The CA shall not approve, and the owner shall not receive, any increase of contract rent unless all contract units are in accordance with the PCS, and the owner has complied with the terms of the assisted leases and the HAP contract.

D. Notice of rent adjustment

Contract rents shall be adjusted by written notice by CA to the owner in accordance with this section. Such notice constitutes an amendment of the rents specified in Exhibit A.

7. OWNER RESPONSIBILITY

A. The owner is responsible for:

- 1) Performing all management and rental functions for the contract units.
- 2) Selecting tenants.
- 3) Determining tenant eligibility.
- 4) Performing an initial examination and reexamination of family income.
- 5) Calculating the amount of the tenant rent and the housing assistance payment in accordance with the HAP contract and HUD requirements.
- 6) Entering a lease with each assisted tenant.
- 7) Enforcing tenant obligations under the lease.
- 8) Paying for utilities and housing services (unless paid by the tenant in accordance with the HAP contract).
- 9) Collecting from the tenant.
 - a) Any security deposit.
 - b) The tenant rent.
 - c) Any charge for unit damage by the family.
- 10) Paying the family any applicable utility reimbursement for tenant-paid utilities (where the amount of the utility allowance exceeds the amount of the tenant rent).
- 11) Submitting monthly requests for payment in the form and manner required by HUD and the CA.
- 12) Maintaining and accounting for the replacement reserve.

B. The owner shall perform all owner responsibilities in accordance with HUD requirements.

8. OWNER CERTIFICATION

The owner certifies that at all times during the term of the HAP contract:

- 1) All contract units for which the owner is receiving housing assistance payments are in good and tenantable condition, and in accordance with the PCS. The owner is maintaining the premises and all contract units in accordance with the PCS.

- 2) The owner is providing all the services, maintenance and utilities as agreed to under the HAP contract and the leases with assisted families.
- 3) Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family, and the lease is in accordance with the HAP contract and HUD requirements.
- 4) To the best of the owner's knowledge, the members of an eligible family reside in each contract unit for which the owner is receiving housing assistance payments, and the unit is the family's only residence.
- 5) The owner (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit.
- 6) The amount of any housing assistance payment requested or received by the owner is the correct amount due under the HAP contract.
- 7) The contract rent for each contract unit does not exceed rents charged by the owner for other comparable unassisted units.
- 8) Except for the housing assistance payment and the tenant rent as provided under the HAP contract, the owner has not received and will not receive any payments or other consideration (from the family, the CA, HUD, or any other public or private source) for rental of the contract unit.
- 9) The family does not own, or have any interest in the contract unit. If the owner is a cooperative, the family may be a member of the cooperative.

9. CONDITION OF UNITS

A. Owner maintenance and operation

- 1) The owner must maintain and operate the contract units and premises to provide, decent, safe and sanitary housing in accordance with the PCS, including performance of ordinary and extraordinary maintenance.
- 2) Both at the beginning of the contract term, and at all times thereafter during the contract term, the owner shall not request payment for or receive any housing assistance payment for any unit during any period when the unit or premises are not in accordance with the PCS.
- 3) If the premises or any contract unit is not in compliance with the PCS at the beginning of the contract term, the owner must promptly perform any ordinary or extraordinary maintenance necessary to bring the unit into compliance with the PCS. However, the owner shall not request or receive any housing assistance payment with respect to a contract unit for any period when the premises or the unit are not in accordance with the PCS.
- 4) The owner must provide all the services, maintenance and utilities set forth in Exhibit B, and in the lease with each assisted family.

B. CA inspection

The CA may inspect the contract units and the premises annually, and at any time the CA deems necessary to assure that the contract units and premises are in accordance with the PCS, and that the owner is providing the maintenance, utilities, and other services in accordance with the leases and the HAP contract. The CA shall give the owner reasonable notice of the annual inspection.

C. Violation of PCS

- 1) If the CA determines that a contract unit is not in accordance with the PCS, the CA may exercise any of its remedies under the HAP contract for all or any contract units. Such remedies include termination, suspension or reduction of housing assistance payments, and termination of the HAP contract. The CA may exercise any contractual remedy respecting a contract unit even if the family continues to occupy the unit.
- 2) The CA shall not make any housing assistance payment for a dwelling unit that fails to meet the PCS. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within no more than 30 calendar days (or any CA-approved extension). The owner shall not request or receive any housing assistance payment for dwelling unit for any period prior to the correction of any defect.

D. Maintenance and replacement – owner's standard practice

Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

10. LEASING CONTRACT UNITS

- A. During the term of the HAP contract, the owner must lease all contract units to eligible families.
- B. The owner must determine family eligibility in accordance with HUD requirements.
- C. The contract unit leased to each family must be appropriate for the size of the family as determined in accordance with HUD requirements.
- D. If a contract unit was occupied by an eligible family on the effective date of the HAP contract, the owner must offer the family the opportunity to lease the same or another appropriately sized contract unit with assistance under the HAP contract.
- E. The owner is responsible for screening and selecting tenants.

11. TENANCY

A. Lease

The lease between the owner and each assisted family must be in accordance with HUD requirements. The lease must include word-for-word all provisions required by HUD.

B. Termination of tenancy

- 1) The owner may only terminate a tenancy in accordance with the lease and HUD requirements.
- 2) The owner must give the CA a copy of any owner eviction notice to the tenant at the same time that the owner gives notice to the tenant. Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used to commence an eviction action under State or local law.

C. Family payment

- 1) The portion of the monthly contract rent payable by the family ("tenant rent") will be determined by the owner in accordance with HUD requirements. The amount of the tenant rent is subject to change during the term of the HAP contract.
- 2) The amount of the tenant rent as determined by the owner in accordance with HUD requirements is the maximum amount the owner may charge the family for rent of a contract unit, including all housing services, maintenance and utilities to be provided by the owner in accordance with the HAP contract and the lease.
- 3) The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the owner in accordance with HUD requirements. The owner must immediately return any excess tenant rent payment to the tenant.
- 4) The family is not responsible for payment of the portion of the contract rent covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for nonpayment of the CA housing assistance payment.
- 5) The owner is responsible for computing, in accordance with HUD requirements, the amount of the housing assistance payment and the tenant rent for each assisted family.

D. Other owner charges

The owner may not charge the tenant or family members extra amounts for items customarily included in rent in the locality or provided at no additional cost to an unsubsidized tenant in the premises.

E. Security deposit

- 1) The owner may collect a security deposit from the family.
- 2) The owner must comply with HUD and CA requirements regarding security deposits from a tenant.
- 3) When the family moves out of the contract unit, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit or other amounts which the family owes under the lease. The owner must give the family a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used as reimbursement to the owner, the owner must promptly refund the full amount of the balance to the family.
- 4) If the security deposit is not sufficient to cover amount the family owes under the lease, the owner may seek to collect the balance from the tenant.

12. RESERVE FOR REPLACEMENTS

The owner must establish and maintain a replacement reserve for the property, in the amount required by HUD, to pay for extraordinary maintenance and repair, and for replacement of capital items. The owner must establish, maintain and account for the replacement reserve in accordance with HUD requirements.

13. OVERCROWDED AND UNDEROCCUPIED UNITS

If a contract unit is not decent, safe and sanitary because of an increase in the family size which causes the unit to be overcrowded, or if a contract unit is larger than appropriate for the size of the family, the owner must offer the family a suitable unit as soon as one becomes vacant and ready for occupancy, and the owner must require the family to move.

14. PROHIBITION OF DISCRIMINATION

- A. The owner may not refuse to lease contract units to, or otherwise discriminate against any person or family in leasing of a contract unit, because of race, color, creed, religion, sex, national origin, disability or familial status (i.e., because the family includes children).
- B. The owner must comply with the following requirements;
 - 1) The Fair Housing Act (42 U.S.C. 3610 – 3619) and implementing regulations at 24 CFR parts 100, et seq.;
 - 2) Executive Orders 11063, 12259, and 12892 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107;
 - 3) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d – 2000d-4) (prohibition of discrimination in Federally-assisted programs) and implementing regulations at 24 CFR part 1;
 - 4) The Age Discrimination Act of 1975 (42 U.S.C. 6101 – 6107) and implementing regulations at 24 CFR part 146;
 - 5) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibition of discrimination because of disability) and implementing regulations at 24 CFR part 8);
 - 6) Executive Orders 11625, 12138, and 12432 (promoting minority and womens' business enterprise);
 - 7) Title II of the Americans with Disabilities Act (42 U.S.C. 12101, et seq.)(prohibition of employment discrimination because of disability); and
 - 8) The fair housing advertising poster guidelines at 24 CFR part 110.
- C. The CA and the owner must cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and implementing regulations.

15. REDUCTION OF CONTRACT UNITS

If the owner fails for a continuous period of six months to have all of the contract units leased or available for leasing by eligible families, the contract administrator may, on thirty (30) calendar days notice, reduce the number of contract units to not less than the number of units under lease to eligible families.

16. OWNER DEFAULT AND CA REMEDIES

A. Owner default

Any of the following is a default by the owner under the HAP contract:

- 1) The owner has failed to comply with any obligation under the HAP contract, including the owner's obligations to maintain all contract units in accordance with the PCS.
- 2) The owner has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).
- 3) The owner has committed any fraud or made any false statement to the CA or HUD in connection with the HAP contract.
- 4) The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.
- 5) If the property is subject to a lien or security interest securing a HUD loan or a mortgage insured by HUD:
 - a) The owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement, or
 - b) The owner has committed fraud, bribery or any other corrupt or criminal act in connection with the HUD loan or HUD-insured mortgage.
- 6) If the owner has engaged in any drug-related criminal activity or any violent criminal activity.

B. CA remedies

- 1) If the CA determines that a breach has occurred, the CA may exercise any of its rights or remedies under the HAP contract.

- 2) The CA must notify the owner in writing of such determination. The notice by the CA to the owner may require the owner to take corrective action (as verified by the CA) by a time prescribed in the notice.
- 3) The CA's rights and remedies under the HAP contract include recovery of overpayments, termination or reduction of housing assistance payments, and termination of the HAP contract.

C. CA remedy is not waived

The CA's exercise or non-exercise of any remedy for owner breach of the HAP contract is not a waiver of the right to exercise that remedy or any other right or remedy at any time.

17. OWNER DUTY TO PROVIDE INFORMATION AND ACCESS REQUIRED BY HUD OR CA

A. Required information

The owner must prepare and furnish any information pertinent to the HAP contract as may reasonably be required from time to time by the CA or HUD. The owner shall furnish such information in the form and manner required by the CA or HUD.

B. CA and HUD access to premises

The owner must permit the CA or HUD or any of their authorized representatives to have access to the premises during normal business hours, and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the owner to the extent necessary to determine compliance with the HAP contract, including the verification of information pertinent to the housing assistance payments or the HAP contract.

18. CA AND OWNER RELATION TO THIRD PARTIES

A. Injury because of owner action or failure to act

The CA has no responsibility for or liability to any person injured as a result of the owner's action or failure to act in connection with the implementation of the HAP contract, or as a result of any other action or failure to act by the owner.

B. Legal relationship

The owner is not the agent of the CA. The HAP contract does not create or affect any relationship between the CA and any lender to the owner or any suppliers, employees, contractors or subcontractors used by the owner in connection with the implementation of the HAP contract.

C. Exclusion of third party claims

Nothing in the HAP contract shall be construed as creating any right of a family or other third party (other than HUD) to enforce any provision of the HAP contract, or to assert any claim against HUD, the CA or the owner under the HAP contract.

D. Exclusion of owner claims against HUD

Nothing in the HAP contract shall be construed as creating any right of the owner to assert any claim against HUD.

19. CONFLICT OF INTEREST

A. Prohibited interest

- 1) No covered individual or entity may have any direct or indirect interest in the HAP contract.
- 2) Direct or indirect interest includes the interest of an immediate family member.

B. Definitions

- 1) "Immediate family member" means the spouse, parent, child, grandparent, grandchild, sister, or brother of any covered individual.
- 2) "Covered individual or entity" means an individual or entity that is a member of any of the following classes:
 - a) A member, officer or director of the CA, or any other CA official with administrative functions or responsibility concerning contract administration under the ACC.
 - b) If the CA is an instrumentality of a governmental body:
 - i) A member, officer or director of such governmental body.
 - ii) A member, officer or director of any entity that holds a direct or indirect interest in the instrumentality entity.
 - c) An employee of the CA.
 - d) A CA contractor, subcontractor or agent with administrative functions or responsibility concerning contract administration under the ACC, or a principal or other interested party of such contractor, subcontractor or agent.

- e) An individual who has administrative functions or responsibility concerning contract administration under the ACC, including an employee of a CA contractor, subcontractor or agent.
- f) A public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities concerning contract administration under the ACC.

C. Disclosure

- 1) A covered individual or entity must disclose his, her or its interest or prospective interest in the HAP contract, or any other contract, subcontract or other arrangement in connection with contract administration under the ACC to the CA and HUD.
- 2) The owner certifies that it has fully disclosed to the CA and HUD any interest that would be a violation of the conflict of interest requirements, and that it will fully and promptly update such disclosures.

D. HUD waiver

- 1) HUD may waive the conflict of interest requirements for good cause.
- 2) Any covered individual or entity for whom a waiver is granted may not execute any contract administration functions or responsibility concerning a HAP contract under which such individual is or may be assisted, or with respect to a HAP contract in which such individual or entity is a party or has any interest.

E. Interest of member of Congress

No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share of part of the HAP contract or to any benefits, which may arise from it.

20. EXCLUSION FROM FEDERAL PROGRAMS

A. Federal requirements:

The owner must comply with and is subject to requirements of 24 CFR Part 24, concerning debarment, suspension, and limited denial of participation.

B. Disclosure

The owner certifies that:

- 1) The owner has disclosed to the CA the identity of the owner and any principal or interested party.
- 2) Neither the owner nor any principal or interested party is listed on the U.S. General Services Administration list of parties excluded from Federal procurement and nonprocurement programs; and none of such parties are debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24.

21. TRANSFER OF THE CONTRACT OR PROPERTY

A. When consent is required

- 1) The owner agrees that the HAP contract may not be transferred without the advance written consent of the CA in accordance with HUD requirements.
- 2) The owner agrees that the property may not be transferred without the advance written consent of the CA in accordance with HUD requirements.
- 3) "Transfer" includes:
 - a) An assignment or other transfer of ownership, in any form, of the HAP contract or the property;
 - b) An assignment or other transfer of the right to receive housing assistance payments that may be payable pursuant to the HAP contract;
 - c) The creation of a security interest in the HAP contract or the property;
 - d) Foreclosure or other execution on a security interest; or
 - e) A creditor's lien, or a transfer in bankruptcy.
- 4) If the owner is a corporation, partnership, trust or joint venture, the owner is not required to obtain advance consent of the CA pursuant to this paragraph A of the HAP contract for transfer of a passive and non-controlling interest in the ownership entity (such as a stock transfer or transfer of the interest of a limited partner), if any interests so transferred cumulatively represent less than half the beneficial interest in the HAP contract or the property. The owner must obtain advance consent pursuant to paragraph A of the HAP contract to transfer any interest of a general partner.

B. Transferee assumption of HAP contract

No transferee (including the holder of a security interest, the security holder's transferee or successor in interest, or the transferee upon exercise of a security interest) shall have any right to receive any payment of housing assistance payments pursuant to the HAP contract, or to exercise any rights or remedies under the HAP contract, unless the CA has consented in advance, in writing, to such transfer, and the transferee has agreed in writing, in a form acceptable to the CA in accordance with HUD requirements, to assume the obligations of the owner under the HAP contract, and to comply with all the terms of the HAP contract.

C. Effect of consent to transfer

- 1) The creation or transfer of any security interest in the HAP contract is limited to amounts payable under the HAP contract in accordance with the terms of the HAP contract.
- 2) The CA's consent to transfer of the HAP contract does not change the terms of the HAP contract in any way, and does not change the rights or obligations of the CA or the owner under the HAP contract.
- 3) The CA's consent to transfer of the HAP contract to any transferee does not constitute consent to any further transfers of the HAP contract, including further transfers to any successors or assigns of an approved transferee.

D. When transfer is prohibited

The CA will not consent to the transfer if any transferee, or any principal or interested party is debarred, suspended or subject to a limited denial of participation under 24 CFR part 24, or is listed on the U. S. General Services Administration list of parties excluded from Federal procurement or nonprocurement programs.

22. OWNER DISCLOSURE OF OTHER GOVERNMENT ASSISTANCE

A. Owner disclosure

The owner must disclose to the CA, in accordance with HUD requirements, information regarding any assistance from the Federal Government, a State, or a unit of general local government, or from any agency or instrumentality thereof, that is available or expected to be available with respect to the contract units ("covered assistance"). Covered assistance includes, but is not limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, or tax benefit, or any other form of direct or indirect assistance.

B. Limit of payments

Housing assistance payments under the HAP contract must not be more than is necessary, as determined in accordance with HUD requirements, to provide affordable housing after taking account of any covered assistance. The CA will adjust, in accordance with HUD requirements, the amount of the housing assistance payments to the owner to compensate in whole or in part for any covered assistance.

23. OWNER LOBBYING CERTIFICATIONS

A. The owner certifies, to the best of owner's knowledge and belief, that:

- 1) No Federally appropriated funds have been paid or will be paid, by or on behalf of the owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the HAP contract.
- 2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the HAP contract, the owner must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification by the owner is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

24. NOTICES AND OWNER CERTIFICATIONS

A. Where the owner is required to give any notice to the CA pursuant to the HAP contract, such notice must be in writing, and must be given in the form and manner required by the CA.

B. Any certification or warranty by the owner pursuant to the HAP contract shall be deemed a material representation of fact upon which reliance was placed when this transaction was made or entered into.

25. HUD REQUIREMENTS

The HAP contract shall be interpreted and implemented in accordance with all statutory requirements, and with all HUD requirements, including amendments or changes in HUD requirements during the term of the HAP contract. The owner agrees to comply with all such laws and HUD requirements.

26. ENTIRE AGREEMENT

The HAP contract, including the exhibits, is the entire agreement between the CA and the owner. No changes in the HAP contract may be made except in writing signed by both the owner and the CA.

[illegible]

NOTE: This Exhibit will be amended by Contract Administrator notice to the Owner to specify adjusted contract rent amounts as determined by the Contract Administrator in accordance with section 6A of the renewal contract.

[illegible]

INSTRUCTIONS

Preparation of the HAP Contract:

The HAP contract consists of Part 1, Part 2, and the contract exhibits. The exhibits are listed in paragraph 1.C of Part 1.

This form of HAP contract must be used word-for-word, and may not be modified.

Part 1 contains section 1 of the HAP contract. Part 2 contains sections 2 to 26 of the HAP contract.

Part 1 includes fill-in items, and a list of the contract exhibits. Fill out part 1 to prepare the HAP contract for execution.

The form of HAP contract must be used word-for-word, and may not be modified.

Contract execution:

Part 1 must be signed by the CA and by the owner of the housing.

ENDNOTES

- ¹ Enter all contract information.
- ² Enter a description of the housing that will be covered by the HAP contract. The description must clearly identify the property by providing the property's name, street address, city, county, state and zip code, block and lot number (if known), and any other information necessary to clearly designate the covered property.
- ³ If necessary, attach as Exhibit A a site plan, legal description or other descriptive information.
- ⁴ If required by the CA, attach as Exhibit B any additional information describing the physical condition, location and/or plans of the contract units.
- ⁵ List in the space provided and attach at the back of the contract any additional exhibits, beginning with Exhibit C.

Certification of Substantial Compliance

Attachment G

TO: The United States Department of Housing and Urban Development

FROM: _____

I Certify to HUD that any and all project(s) that are owned by _____, or its affiliates,
and located in _____ (City or Town where project being purchased is located) is/are
in substantial compliance with applicable State and/or local housing statutes, regulations, ordinances and
codes and are listed on Schedule A attached hereto.

WARNING: It is a crime to knowingly make false statements to the United States in this document or any
other document related to this sale. Penalties upon conviction can include a fine or imprisonment. For
details see: Title 18 U.S. Code, Section 1001 and Section 1010.

By: _____
Purchaser Name

Verified by: _____

Title

Typed Name

Address

Title

Address

Telephone Number

Date

Phone

Date

STATE OF: _____)
COUNTY OF: _____)

Came before me this _____ day of _____, 2006. Notary Seal

Schedule A: All projects owned by _____ or affiliates.

List each project name	List name of principal or affiliate with ownership of project.	List project address